



C.M.A.(MD).No.654 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.654 of 2021

1.Kasipandi Nadar
2.Chandralekha

... Appellants

Vs.

1.Juliyas Stella Mery

2.HDF ERGO General Insurance Company Limited,
through its Branch Manager,
No.248B, b-1, C.C.-1,
Rekha Towers,
Kamarajar Salari Road,
Madurai 625 009.

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.674 of 2015 on the file of the Motor Accident Claims Tribunal Authority (Special Sub Judge), Tirunelveli, dated 08.07.2021.

For Appellants	: Mr.T.Selvakumaran
For R1	: No appearance
For R2	: Mr.J.S.Murali



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J U D G M E N T

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The claimants have filed this appeal, not satisfied with the claim arrived by the Motor Accident Claims Tribunal.

2. The deceased Manikandan, aged about 14 years pursuing 8th standard. On 01.12.2013, at about 12.00 noon, one Ganesan was driving a Tractor Trailer bearing Registration No.TN 76 R 1022 belonging to the first respondent insured with the second respondent in order to fetch water in a well to irrigate plants inside the R.C.Church premises at Thanoothu. When the tractor driver was fetching the water over the tanker trailer, the deceased out of curiosity touched the body along with the driver. At that time, electric power was passed through the body of the driver and the deceased. As a result, the deceased sustained serious burn injuries and succumbed to the injuries. Thereafter, a case in Crime No.288 of 2013 also registered under Section 304 of I.P.C. The contention of the claimants is that the death was caused due to the negligence of the first respondent and the first respondent is the owner of the Tractor. The Tribunal found that the accident had occurred only due to the negligence of the owner of the Tractor ie., the first respondent in using the old leakage wire in her tractor at the time of accident and engaging the deceased driver for such work and the first respondent is responsible for the accident and awarded a sum of



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Rs.9,77,200/- as compensation, by adopting a notional income of Rs.6,000/-.

Challenging the same, the present appeal has been filed.

3. The learned counsel appearing for the appellants would submit that the compensation fixed by the Tribunal is very meagre and the notional income is fixed only Rs.6,000/-. According to him, even the Division Bench of this Court has fixed the monthly income as Rs.10,000/- per month in a judgment reported in **2021 (1) TN MAC 764 (Iffco-Tokio General Insurance Company Limited vs. V.Raja)**, for the student studying in 12th standard. Therefore, the notional income fixed by the Tribunal is not proper.

4. In the light of the aforesaid submissions, the point arise for consideration in this appeal is whether the Tribunal is right in fixing a sum of Rs.6,000/- as notional income. The Tribunal has considered the evidence of P.Ws.1 to 3 and found that the accident had happened due to the negligence of the owner of the Tractor and adopted Rs.6,000/- as monthly income and deducted 50% towards personal expenses and awarded a sum of Rs.9,77,200/- as compensation.



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5. This Court is of the view that admittedly the deceased was pursuing 8th standard and he met with an unfortunate accident. The Division Bench of this Court, in the case of *Iffco-Tokio General Insurance Company Limited vs. V.Raja* reported in **2021 (1) TN MAC 764**, has fixed the monthly income as Rs. 10,000/- per month for the student studying in 12th standard. Taking note of the fact that the deceased in this case pursuing 8th standard, this Court has fixed a sum of Rs.7,000/- as monthly income and added 40% towards future prospects. After deducting 50% towards personal expenses, the loss income comes to Rs. 4,900/- (Rs.9,800/- (Rs.7,000/-+Rs.2,800/-) - 50%). Thus, the total loss of income comes to Rs.10,58,400/- (Rs.4,900/- x 12 x 18 =10,58,400/-). The amount awarded under the heads of parental consortium to the petitioners at Rs. 40,000/-, loss of estate at Rs.15,000/- and funeral expenses at Rs.15,000/- remains unaltered and the same are confirmed. Thus, the total compensation payable to the appellants/claimants is Rs.11,28,400/-.

6. In the result, this Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the entire award amount within a period of four weeks from the date of receipt of a copy of this order. On such compliance, the appellants/claimants are permitted to withdraw their



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share as apportioned by the Tribunal. No costs.

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To

- 1.The Motor Accident Claims Tribunal Authority
(Special Sub Judge),
Tirunelveli.
- 2.HDF ERGO General Insurance Company Limited,
through its Branch Manager,
No.248B, b-1, C.C.-1,
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