



C.M.A.(MD).No.273 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.273 of 2023

1.T.Thiruvayi
2.T.Kowshalya
3.T.Kavitha
4.T.Kavya
5.Minor T.Muthukamalesh

... Appellants

-Vs-

1.P.Nagarajan
2.The Manager,
United India Insurance Company Limited,
Motor Third party Claims HUB,
3rd Floor, 7A, West Veli Street,
Madurai 625 001.

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No.815 of 2020 on the file of the Motor Accident Claims Tribunal, District and Sessions Judge, Communal Clash Cases Court, Madurai dated 18.10.2022 for enhancement of compensation.



C.M.A.(MD).No.273 of 2023

WEB COPY

For Appellant : Mr.K.Kumaravel

For R2 : Mr.Royce Immanuel

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal, District and Sessions Judge, Communal Clash Cases Court, Madurai in M.C.O.P.No.815 of 2020, dated 18.10.2022, the present appeal has been filed by the claimants for enhancement of compensation.

2. The brief facts leading to the filing of this appeal are as follows:

On 21.05.2020, at about 16.30 hours, the deceased Thangaraj was spreading a tar blue metal in laying the road and when the first respondent's driver tipping the tipper lorry bearing Registration No.TN 38 V 2889 for unloading the tar mixed blue metal, the body of the lorry dashed the high power electric wire. As a result, the deceased sustained multiple electric shock injury and died on the way to Government Hospital, Ilayangudi. According to the petitioners, the accident had happened only due to the negligence on the part of the first respondent's driver. The Insurance Company took a stand that the deceased was



C.M.A.(MD).No.273 of 2023

WEB COPY

died only due to fall of high voltage electric wire, while he was doing road work under the control of Madurai contractor and hence, the petitioners cannot claim any compensation under the provisions of Motor Vehicles Act.

3. Before the Tribunal, on the side of the petitioners, P.Ws.1 and 2 were examined and Exs.P1 to P12 were marked and on the side of the respondents R.Ws.1 and 2 were examined and no document was marked and Exs.X1 to X3 were marked.

4. The Tribunal, on analysing the oral and documentary evidence, held that only the driver of the lorry was negligent in operating the tipper lorry and fixed the notional income of the deceased at Rs.9,000/- and adopted multiplier '14' and awarded a sum of Rs.16,47,416/- as compensation in the following manner:

S. No	Description	Amount awarded by the Tribunal
1.	Loss of pecuniary benefits	Rs.14,17,416/-
2.	Loss of estate	Rs.15,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Consortium	Rs.2,00,000/-
	Total	Rs.16,47,416/-



C.M.A.(MD).No.273 of 2023

WEB COPY

5. It is the contention of the learned counsel appearing for the appellants that the deceased was aged about 44 years and skilled worker and he was used for building the metal road and his income would be more than Rs.15,000/-, whereas the Tribunal has fixed the notional income of the deceased at Rs.9,000/-, which is very low. Hence, he seeks to enhance the same, whereas the learned counsel appearing for the second respondent would submit that the deceased was died due to electrocution not by accident.

6. In the light of the above submissions, now the point for consideration in this appeal is whether the Tribunal is right in fixing the notional income of the deceased at Rs.9,000/-, despite the fact the deceased was a skilled worker. It is not disputed about the death. The only contention raised before this Court is that the death is not due to the accident and only by the electrocution. Such contention has no legs to stand.

7. It is relevant to note that the very factum that the live wire fell on the deceased due to the vehicle dashed against the transformer is not disputed and the



C.M.A.(MD).No.273 of 2023

WEB COPY

F.I.R. is also filed against the driver of the lorry. The evidence adduced before the Tribunal clearly established the above facts. Therefore, the contention raised before this Court by the Insurance Company cannot be countenanced and in fact, there is a nexus between the act of the driver of the lorry and the death of the deceased.

8. Such being the position, it has to be held that only in an accident, the death is occurred, while operating the motor vehicle. As far as the income of the deceased is concerned, it was established before the Tribunal that the deceased was a skilled labour and he was used in laying the metal road while mixing the tar. It is relevant to note that spreading the tar and laying the metal road required special skill and an ordinary labour may not be in a position to spread the tar in a proper manner.

9. In such a view of the matter, when the deceased was a skilled labour and engaged in spreading of tar, this Court is of the view that he would have earned more than Rs.12,000/- per month. Considering the date of accident, this Court has fixed the notional income of the deceased at Rs.12,000/- per month and added



C.M.A.(MD).No.273 of 2023

WEB COPY

25% towards future prospects and after deducting 1/4th share towards personal expenses, the monthly income comes to Rs.11,250/- (Rs.12,000/- + Rs.3,000/- - Rs.3,750/-). Thus, the total loss of pecuniary benefits comes to Rs.18,90,000/-. In respect of the other aspects, the amount awarded by the Tribunal is confirmed.

10. In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is enhanced as given below:

S.No.	Description	Amount
1.	Loss of pecuniary benefits	Rs.18,90,000/-
2.	Loss of estate	Rs.15,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Consortium	Rs.2,00,000/-
	Total	Rs.26,07,500/-

11. The second respondent/Insurance Company is directed to deposit the entire award amount within a period of two months from the date of receipt of a copy of this judgment. On such deposit, the first claimant is entitled to a sum of Rs.10,00,000/- and the claimants 2 to 5 are entitled to a sum of Rs.4,01,875/- each. The Tribunal shall deposit the share of the minor claimant in a fixed deposit in any one of the Nationalized Bank, till he attains majority. The guardian of the

6/10



C.M.A.(MD).No.273 of 2023

WEB COPY

minor is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs.

23.06.2023

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To

- 1.The Motor Accident Claims Tribunal,
District and Sessions Judge,
Communal Clash Cases Court,
Madurai.
- 2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.273 of 2023

N.SATHISH KUMAR, J.

akv

C.M.A.(MD).No.273 of 2023

23.06.2023



C.M.A.(MD).No.273 of 2023

WEB COPY

C.M.A.(MD) NO.273 of 2023

N.SATHISH KUMAR.J.,

This Civil Miscellaneous Appeal was disposed of by judgement dated 23.06.2023 allowing the appeal.

2. It is again listed today under the caption “For Being Mentioned” at the instance of the learned counsel for the 2nd respondent/United India Insurance Company Limited to set right the clerical error in calculation of total compensation. According to him, the total must be Rs.21,20,000/- but it has been inadvertently typed as Rs.26,07,500/-.

3. This court has perused the original judgement. There is an error as pointed out by the learned counsel for the 2nd respondent in the calculation of total compensation which is mere typographical error. The error is typographical one apparent on record which is not disputed by the learned counsel for the appellants. It has to be set right by way of amendment.



WEB COPY



C.M.A.(MD).No.273 of 2023

N.SATHISH KUMAR.J.,

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4. Accordingly, the total amount as found in para 10 of the judgement “Rs. 26,07,500/-” shall be corrected as Rs.21,20,000/-. Correspondingly the amount apportioned among the respondents 2 to 5 has also to be corrected. Accordingly, the amount in figures “Rs.4,01,875/-” shall be corrected as “Rs.2,80,000/- each”.

5. The Registry is directed to carry out amendment in the original judgement as indicated above and issue certified copies of the judgement to the parties concerned accordingly.

13..09..2023

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C.M.A.(MD) NO.273 of 2023