



C.M.A. (MD)No.364 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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1.S.Jasmine
2.Minor S.Mohamed Asslan
3.Minor S.Mariyam Alisha
(Minor 2 and 3 are represented by
their natural guardian / mother 1st petitioner)
4.S.Mohamed Ali Jinna
5.M.Mohamed Fathima ... Appellant/ petitioners

Vs.

1.C.V.Rajendran
2.The Manager,
New Indian Insurance Company Limited,
Sulthanpattai,
Palakat District,
Kerala. Respondents / Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, as against the fair and decretal order dated 01.04.2021 made in M.A.C.O.P.No.159 of 2015 on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Dindigul.



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For Appellants : Mr.S.Pugalendhi
For Respondents : Mr.J.S.Murali for R2

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal, (Additional District Judge), Dindigul, dated 01.04.2021, the appellants – claimants have filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

On 04.09.2014, at about 3.45 p.m., the deceased was travelling in a Motorcycle bearing Registration No.TN-57-AA-6184 and seated as pillion rider. At that time, a Lorry bearing Registration No.KL-09-AB-6868, belonging to the first respondent, came in a rash and negligent manner and dashed against the two wheeler and as a result, the deceased succumbed to injuries. Hence, the petitioners / claimants, who are the wife, children and parents of the deceased, have filed the claim petition.



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4. To substantiate the case before the Tribunal, on the side of the petitioners, one witness was examined as P.W.1 and 12 documents were marked as Ex.P1 to P.12 and on the side of the 2nd respondent - Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and three documents were marked as Ex.R1 to Ex.R3.

5. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, has fixed the following compensation with interest at the rate of 7.5% per annum:

S. No	Heads	Amount
1.	Loss of income	Rs.13,92,300/-
2.	Loss of Consortium	Rs. 10,000/-
3.	Loss of Love and affection	Rs. 30,000/-
4.	Loss of Estate	Rs. 2,700/-
5.	Funeral expenses	Rs. 15,000/-
	Total	Rs.14,50,000/-

Aggrieved over the same, the petitioners / claimants have filed this Civil Miscellaneous Appeal for enhancement of compensation.



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6. The learned counsel appearing for the petitioners / appellants submitted that the deceased was 28 years at the time of accident, he was earning a sum of Rs. 10,000/-. However, the Tribunal fixed the notional income of the deceased at Rs. 6,500/- and therefore, the notional income ought to have been increased.

7. The learned counsel appearing for the 2nd respondent – Insurance Company is not disputed about the insurance and also the negligence and submitted that the Tribunal after considering the entire evidence, has correctly awarded the compensation and therefore, it does not require any interference.

8. I have heard the learned counsel appearing on either side and perused the materials available on record.

9. The only point arise for consideration in this appeal is whether the quantum fixed by the Tribunal is proper or not?

10. On a perusal of the records, it is seen that P.W.1 is the wife of the deceased and she has given evidence to the effect that the deceased was a lorry driver by profession and he has also having relevant license and to substantiate the



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same, Ex.P4 is also filed. However, the tribunal fixed the notional income of the deceased at Rs.6,500/-, which is not proper. This Court is of the view that the motor vehicle license is also filed to show that the deceased was a heavy vehicle driver and therefore, being a heavy vehicle driver, he would have earned a sum of Rs.10,000/-. Such view of the matter, though there was no evidence to show that the deceased was earning a sum of Rs.10,000/-, considering the fact that he was a heavy vehicle driver, this Court fixed the notional income of the deceased at 10,000/- and if 40% is added, towards future prospects, then the notional income comes to Rs.14,000/-. If 1/4th is deducted, towards personal expenses, the notional income comes to Rs.10,500/-. If '17' multiplier is applied, the total loss of income comes to Rs.21,42,000/- (10,500x12x17). The Tribunal has awarded only a sum of Rs.10,000/- for loss of consortium to the first petitioner, which is not proper. Hence, this Court is inclined to enhance the same to Rs.40,000/-. The Tribunal has awarded a sum of Rs.30,000/- to the petitioners 2 to 5 towards loss of love and affection, which is not reasonable. Hence, this Court awarded a sum of Rs.40,000/- each to the petitioners 2 to 5 towards loss of love and affection. The Tribunal has awarded a sum of Rs.2,700/- towards loss of estate, which is not proper. Hence, this Court is inclined to fix a sum of Rs.15,000/- towards loss of estate. The Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses,



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which is reasonable and therefore, the same is confirmed. The Tribunal has not awarded any amount towards transportation. Hence, a sum of Rs.10,000/- is awarded towards transportation. The Tribunal has ordered pay and recovery, which is correct and therefore, the same is confirmed. Accordingly, the compensation is modified as follows:

S. No	Heads	Amount
1.	Loss of income	Rs.21,42,000/-
2.	Loss of Consortium to the 1 st petitioner	Rs. 40,000/-
3.	Loss of Love and affection to the petitioners 2 to 5 (Rs.40,000/ each)	Rs. 1,60,000/-
4.	Loss of estate	Rs. 15,000/-
5.	Funeral expenses	Rs. 15,000/-
6.	Transport Expenses	Rs. 10,000/-
	Total	Rs.23,82,000/-

The compensation is enhanced from Rs.14,50,000/- to Rs.23,82,000/- along with interest at 7.5% p.a.

11. In the result, this Civil Miscellaneous Appeal is allowed. The 2nd respondent – Insurance Company is directed to deposit the entire enhanced compensation amount of Rs.23,82,000/- (Rupees Twenty Three Lakhs and Eighty



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Two Thousand only) along with interest at the rate of 7.5% p.a., less the amount, if any, already deposited, from the date of petition till the date of deposit, within a period of 8 weeks from the date of receipt of a copy of this judgment, if not deposited earlier. The 2nd respondent-Insurance Company is permitted to recover the said amount from the owner of the vehicle viz., the first respondent.

12. On such deposit, the first petitioner is entitled to get a sum of Rs.10,00,000/-. The petitioners 2 and 3 are entitled to get a sum of Rs.5,00,000/- each. The petitioners 4 and 5 are entitled to get a sum of Rs.1,91,000/- each. The petitioners 1, 4 and 5 may approach the Tribunal for withdrawal of the said amount, for filing necessary application and if such an application is filed, the Tribunal shall pass orders for withdrawal. Insofar as the shares of the minors / petitioners 2 & 3 are concerned, the Tribunal is directed to deposit the same in a Fixed Deposit under renewable scheme periodically, till they attain majority and the first petitioner, the Guardian of the minors, is permitted to withdraw the interest accrued thereon once in three months for the welfare of the minors. No costs.

23.03.2023

NCC : Yes/No
Index : Yes/No
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N.SATHISH KUMAR, J.

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To

- 1.The Motor Accident Claims Tribunal,
(Additional District Judge), Dindigul.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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