



C.M.A.(MD)No.428 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2023

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.428 of 2019

and

C.M.P(MD)No.5194 of 2019

The Branch Manager,
National Insurance Company Limited,
Door No.64, Rasi Plaza,
West Pradhakshina Road,
Karur Town, Karur District.

.. Appellant/2nd Respondent

Vs.

1.Maheswari

2.Minor Tamish

3.Sarasu

4.Murugaiah

.. Respondents 1to 4/Petitioners

5.Balasubramanian

.. 5th Respondent/1st Respondent

6.Sasikumar

.. 6th Respondent/3rd Respondent



C.M.A.(MD)No.428 of 2019

7.I.C.I.C.Lombard Motor Insurance Company

through its Branch Manager,

Loyola Technical Institute,

1st Floor, A.A.Road,

Gnanaolipuram,

Madurai Town,

Madurai District- 625 016.

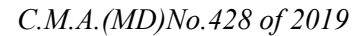
.. 7th Respondent/4th Respondent

[Minor 2nd respondent is represented
by his mother and natural guardian,
1st respondent Maheswari]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 06.12.2018 made in M.C.O.P.No.34 of 2014 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Periyakulam.

For Appellants : Mr.J.S.Murali

For Respondents : Mr.J.Lawrance
for R1 to R4



DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

This appeal is filed by the Insurance Company against the quantum of compensation awarded to the dependents of the deceased Ranjithkumar on the ground that when the claim petition was restricted to Rs.50,00,000/-, the Tribunal has awarded a sum of Rs.67,41,000/- and erred in not deducting 1/3rd from the salary towards personal expenses for the deceased and also not deducting 15% for the contributory negligence of not wearing helmet while driving the two wheeler. Further, the award is under challenge on the ground that under the non-conventional head, though the Constitution Bench of the Hon'ble Supreme Court has fixed Rs.70,000/- as the maximum, the Tribunal has awarded total a sum of Rs.3,15,000/-. Therefore seek interference of the award dated 17.04.2014, passed by the learned Subordinate Judge/Motor Accident Claims Tribunal, Periyakulam, in M.C.O.P.No.34 of 2014.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.



C.M.A.(MD)No.428 of 2019

WEB COPY

3. The learned counsel appearing for the claimants/respondents 1 to 4 submitted that the Tribunal has not erred in awarding 67,41,000/- though the claim is restricted to Rs.50,00,000/-, since the material available has warranted to award higher compensation than prayed. He would further submit that at the time of accident, the deceased Ranjithkumar was working as a Commandant in Indian army. He was 28 years old; married to the first claimant and was having a son aged 2 years. On 14.03.2014, at about 10.00 p.m., when he was riding in a two wheeler bearing Registration No.TN-60-L-2752 from Batlagundu to T.Vadipatti near Attanampatti village at Periyakulam-Madurai Main Road, a lorry bearing Registration No.TN-33-B-5586 dashed against him and he was thrown out from the two wheeler. Due to the head injury, he died. The offending vehicle Lorry was owned by the first respondent Balasubramanian and insured under the second respondent National Insurance Company. Therefore, taking note of the fact that the net salary of the deceased at the time of accident was around Rs.21,000/- as against his gross salary of Rs.27,729/- and by applying the multiplier 17, the loss of income has been ascertained. He being a Army personnel, the Tribunal has rightly not deducted anything for his personal expenses since food, clothing and shelter been provided free of cost by the Indian Army. Also he would submit that under the non-conventional head,



C.M.A.(MD)No.428 of 2019

Rs.3,15,000/- was awarded taking note of the fact that the deceased left behind his young wife, two years old minor son and old parents. Regarding non-wearing of helmet, the learned counsel would submit that that cannot be construed as a contribution to the accident since the accident admittedly occurred due to the negligence of the lorry driver.

4. This Court, after taking note of the rival submissions find that the deceased at the time of the accident was 28 years old working as a commandant in the Indian Army. His salary certificate marked as Ex.P11 reveals that his net salary is few hundreds less of Rs.21,000/- and gross salary is few hundreds less of Rs.28,000/-. The Tribunal has taken the net salary for computing loss of income and at the same time, it has not deducted any money towards income tax. In the judgement of *Yerramma and others v. G.Krishnamurthy and another* reported in (2014) 15 SCC 65 relied by the learned counsel for the claimants, the Hon'ble Supreme Court though directs that gross salary should be taken for computing loss of income, at the same time, it also directed that there must be deduction of 10% towards income tax from the gross salary.



C.M.A.(MD)No.428 of 2019

5. In the instant case, there is no deduction towards income tax made.

Therefore, this Court is of the opinion that there need not be any interference in fixing the approximate monthly income of the deceased as Rs.21,000/- per month with 50% future prospects. As far as the non-deduction towards the personal expenses eventhough it is contended that the deceased was provided with food, shelter and clothing by the Indian Army, it cannot be ruled out that the deceased as an individual might have not incurred any personal expenses. If not 1/3rd, which is the general rule, atleast 1/4th of his income might have been used for his personal comforts. Therefore, 1/4th of the income has to be deducted towards the personal expenses.

6. Regarding the contribution of not wearing helmet, this Court though in agreement with the submission made by the learned counsel for the respondents 1 to 4 that non-wearing of helmet is not the cause for the accident, however, the gravity of injury leading to death of the deceased due to head injury might have been avoided if he had wearing his Head gear. In this case, though statute mandates wearing of head gear by the two wheeler rider, the deceased has not followed the mandate. Therefore, for such violation which has aggravated the effect of the accident ought to be taken note of and for the said reason, this



C.M.A.(MD)No.428 of 2019

Court is of the view that 10% of the total compensation to be deducted towards the contributory negligence.

7. With this observation, the award passed by the Tribunal is modified as follows:

SL. No.	Heads	Award Amount Rs.
1.	Loss of Income Rs.21,000/-+ Rs.10,500/-(50% future prospects)=Rs.31,500/- =31500x12x17x3/4 =48,19,500/-	48,19,500/-
2.	Loss of consortium to Wife	40,000/-
3.	Loss of filial consortium to minor son	40,000/-
4.	Loss of parental consortium for father & mother	80,000/-
5.	Loss of Estate	15,000/-
6.	Funeral Expenses	15,000/-
	Total	50,09,500/-

10% deduction for not wearing head gear = Rs.50,09,500-Rs.5,00,950/-

Total = Rs.45,08,550/-



C.M.A.(MD)No.428 of 2019

8. The learned counsel for the appellant Insurance Company states that the entire award amount has already been deposited and 50% has already been withdrawn. If so, balance as modified, shall be withdrawn by the claimants as mentioned below. The appellant Insurance Company is entitled to refund of the excess amount, if any, along with the proportionate accrued interest.

9. The modified award amount shall be apportioned as follow:

- (i) Rs.7,50,000/- each for the claimants 3 and 4 with proportionate interest at the rate of 7.5% from the date of petition till the date of deposit.
- (ii) The balance amount of Rs.30,08,550/- shall be shared equally between the claimants 1 and 2.[ie. Rs.15,04,275/- each.]
- (iii) The share of the minor second claimant shall be deposited in any one of the nationalised Bank till he attains majority and the first claimant is permitted to withdraw the interest on the minor claimant's share once in six months till he attains majority. Soon after he attains majority, he is entitled to withdraw his share amount after filing appropriate petition before the Tribunal.



C.M.A.(MD)No.428 of 2019

WEB COPY

10. Accordingly, this Civil Miscellaneous Appeal is party allowed. No costs. Consequently, connected miscellaneous petition is closed.

[G.J., J.] & [K.K.R.K., J.]
23.02.2023

Index : Yes/No
Internet : Yes
PJL

To
The Subordinate Judge,
Motor Accidents Claims Tribunal,
Periyakulam,
Theni District.



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and
K.K.RAMAKRISHNAN, J.

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Judgment made in
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and
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