



C.M.A.(MD)No.717 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.717 of 2021

and

C.M.P.(MD)No.6576 of 2021

1.Podhumponnu

2.Minor Kanimozhi

...Appellants/Claimants

Vs.

1.Prabhakar

2.The New India Assurance Company Ltd.,
Represented through its Development Officer,
No.1-A, Ground Floor, Rajasekaran Street,
Sivagangai.

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 19.06.2020 made in M.C.O.P.No.250 of 2018 on the file of the Motor Accident Claims Tribunal (Principal District Court), Sivagangai dismissing the claim petition against the second respondent/Insurance Company as per Clause-5 of the Decreetal order, by allowing this Civil Miscellaneous Appeal with costs.

For Appellant : Ms.N.Juliet Latha

For R1 : No appearance



C.M.A.(MD)No.717 of 2021

For R2 : Mr.C.Karthick

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants challenging the quantum awarded by the Motor Accident Claims Tribunal / Principal District Court, Sivagangai in M.C.O.P.No.250 of 2018 dated 19.06.2020 as well as the direction directing the first respondent to pay the entire compensation though a valid policy is in existence at the relevant point of time.

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

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

(ii) On 31.05.2018 while deceased was riding his motorcycle bearing Registration No.TN-63-H-5989 on Thanjavur to Manamadurai Highway, the first respondent car bearing Registration No.TN-63-AJ-9130 driven by its owner in a rash and negligent manner dashed against the two wheeler, as a result, he was



C.M.A.(MD)No.717 of 2021

succumbed to injuries. The deceased was studying BBA in Alagappa University and he is aged about 23 years at the time of accident. The mother and the sister of the deceased have filed the claim petition.

(iii) The second respondent before the tribunal took a stand that the car did not have valid insurance policy with the second respondent at the relevant point of time. It is also submitted that the accident was occurred only due to the negligent driving on the part of the rider of the motorcycle.

3. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 and Ex.P9 were marked. On the side of the respondents no oral and documentary evidence had been marked.

4.The tribunal on appreciation of entire evidence available on record awarded the compensation as indicated below and directed the first respondent/owner of the car to pay the entire compensation:



C.M.A.(MD)No.717 of 2021

S.No.	Description	Amount
1.	Monthly Income (Notional)	Rs. 10,000/-
2.	Future prospects-deceased being below 40 years age @ 50%	Rs. 5,000/-
3.	Deduction for personal expenses deceased with 2 dependents who are his mother and sister is 1/3	Rs.15,000/-*1/3=Rs.5,000/- Rs. 5,000/-
4.	Loss of Income /Dependency	Rs.10,000/-*12*18 Rs.21,60,000/-
5.	Funeral Expenses	Rs. 15,000/-
6.	Love and affection for the each petitioners Rs.25,000/0	Rs. 50,000/-
7.	Loss of estate	Rs. 15,000/-
	Total	Rs.22,40,000/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the claimants.

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



C.M.A.(MD)No.717 of 2021

6.The learned counsel appearing for the appellants submitted that the notional income fixed by the Tribunal is not proper. The Tribunal ought to have fixed Rs.15,000/- towards notional income of the deceased, since the deceased was studying second year BBA at the time of accident and if he was employed, he would have earned a sum of Rs.15,000/- per month. He further submitted that admittedly, there is an existing policy on the date of accident. But the Tribunal without considering the same had directed the first respondent to pay the entire compensation and the same is not in accordance with law and should be set aside.

7.The learned counsel appearing for the second respondent would submit that the negligence fixed by the Tribunal on the part of the driver of the car is baseless. The deceased had not worn helmet at the time of accident. Further, only the rider of the two wheeler had suddenly crossed the road without following the traffic rules, which had resulted in an accident. The Tribunal has not deducted 1/2 of the income, whereas the Tribunal had deducted 1/3 and the same is not correct. Hence, the opposer opposes this appeal.

8.In view of the above submission, now the points arise for consideration in this appeal is:



C.M.A.(MD)No.717 of 2021

WEB COPY

(1) *Whether the notional income fixed by the Tribunal is proper?; and*
(2) *Whether the Tribunal is right in directing the first respondent to pay the entire compensation?*

9.The Tribunal has relied upon the evidence of P.W.2 to come to the conclusion that the driver of the car was negligent in driving. Though the Insurance Company had taken a stand before the Tribunal that there was no valid insurance policy for the motorcycle, the learned counsel for the respondent fairly admitted before this Court that there was a valid insurance policy cover and the same was in existence even at the time of accident. Hence, this Court holds that as long as the policy is not disputed, the Insurance Company has to pay the compensation as awarded by the Tribunal.

10.Admittedly, the deceased was the second year BBA student. The evidence of P.W.1 clearly shows that the deceased was a bright student. The Tribunal has fixed only Rs.10,000/- as notional income of the deceased. This Court is of the view that the deceased as a BBA student, would have earned a sum of Rs.15,000/- per month. Accordingly, taking into consideration the age of the



C.M.A.(MD)No.717 of 2021

deceased and also the fact that the deceased was a bright student in BBA, this Court fixes the notional income of the deceased as Rs.15,000/- (Rupees Fifteen Thousand only) and the future prospects at 40% as per the dictum laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd., vs. Pranay Sethi and others* [CDJ 2017 SCC 1220].

11.Further, the deceased is a bachelor and hence 1/2 of the income has to be deducted towards personal expenses. But the Tribunal has erred in deducting 1/3 of the income towards the personal expenses of the deceased. Accordingly, the same is modified to 1/2 deduction. Finally, the claimants are entitled to the compensation as stated below:

S.No.	Description	Amount
1.	Monthly Income (Notional)	Rs. 15,000/-
2.	Future prospects-deceased being below 40 years age @ 40%	Rs. 6,000/-
3.	Deduction for personal expenses deceased with 2 dependents who are his mother and sister is 1/2	Rs.21,000/-*1/2= Rs.10,500/- Rs. 10,500/-
4.	Loss of Income /Dependency	Rs.10,500/-*12*18 Rs.22,68,000/-
5.	Funeral Expenses	Rs. 15,000/-



C.M.A.(MD)No.717 of 2021

6.	Love and affection for the each petitioners Rs.25,000/0	Rs. 50,000/-
7.	Loss of estate	Rs. 15,000/-
	Total	Rs.23,48,000/-

12.In fine, this Civil Miscellaneous Appeal is allowed and the award granting compensation of Rs.22,40,000/- made by the Tribunal is modified as stated above.

13.The Insurance Company is directed to deposit the compensation amount i.e., Rs.23,48,000/- (Rupees Twenty Three Lakhs and Forty Eight Thousand only) as modified by this Court with interest at the rate of 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.250 of 2018, on the file of the Motor Accident Claims Tribunal /Principal District Court, Sivagangai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the first claimant is permitted to withdraw a sum of Rs.15,48,000/- (Rupees Fifteen Lakhs and Forty Eight Thousand only), less the amount if any already withdrawn, by making necessary application before the Tribunal. The Tribunals shall deposit the



C.M.A.(MD)No.717 of 2021

share of the minor child/second claimant i.e., Rs.8,00,000/- (Rupees Eight Lakhs only) in a Fixed Deposit in any one of the Nationalized Banks, till the minor claimant attains majority. The guardian of the minor is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accident Claims Tribunal/

Principal District Court, Sivagangai.

2.The Section Officer,

Vernacular Records,

Madurai Bench of Madras High Court,

Madurai.



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C.M.A.(MD)No.717 of 2021

N.SATHISH KUMAR, J.

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C.M.A.(MD)No.717 of 2021

16.03.2023