



C.M.A.(MD)Nos.320 and 606 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.01.2023

Delivered On : 03.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.320 and 606 of 2020

C.M.A.(MD)No.320 of 2020

Kilpat

.. Appellant / Petitioner

Vs.

1.Velmurugan

2.The Branch Manager,

Reliance General Insurance Co.Ltd.,

PLA Kanagu Towers, 15-A, Thillai Nagar,

11th Cross Street, Trichy Town,

Trichy District.

(Policy No.120621723420046999)

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 28.11.2019, made in M.C.O.P.No.99 of 2019, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Ramanathapuram.

For Appellant : Mr.K.Jagadesh Balan

For Respondent No.1 : No appearance

For Respondent No.2 : Mr.V.Sakthivel



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The Branch Manager,
Reliance General Insurance Co.Ltd.,
PLA Kanagu Towers, 15-A, Thillai Nagar,
11th Cross Street, Trichy Town,
Trichy District.

.. Appellant / 2nd Respondent

Vs.

1.Kilpat

... 1st Respondent / Petitioner

2.Velmurugan

... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 28.11.2019, made in M.C.O.P.No.99 of 2019, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Ramanathapuram.

For Appellant : Mr.V.Sakthivel

For Respondent No.1 : Mr.K.Jagadesh Balan

For Respondent No.2 : Dispensed with

COMMON JUDGMENT

C.M.A.(MD)No.320 of 2020 has been filed to enhance the award, dated 28.11.2019, made in M.C.O.P.No.99 of 2019, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Ramanathapuram. The appellant herein is



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the claimant and the respondents herein are the respondents in the original M.C.O.P.

WEEDARY
Petition.

2. C.M.A.(MD)No.606 of 2020 has been filed against the award, dated 28.11.2019, made in M.C.O.P.No.99 of 2019, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Ramanathapuram. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

3. A Brief substance of the claim petition in M.C.O.P.No.99 of 2019, is as follows:

On 14.10.2018, at about 4.00 pm., when the deceased – Jebamalai was walking along the left side edge of the mud road, near Madurai-Rameshwaram National High Ways near Thangachi Madam, a motorcycle bearing Registration No. TN-65-AE-8026 driven by its rider in a rash and negligent manner and dashed against the deceased. He was admitted in Ramanathapuram R.C.Multi Speciality Hospital, then he was admitted in Madurai Vikram Multi Speciality Hospital and then he died on 25.10.2018. The deceased was doing fish business and he was earning Rs.20,000/- per month. The petitioner is his dependant and she claim a sum of Rs.20,00,000/- as compensation.



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4. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.99 of 2019, is as follows:-

The petitioner has to prove that the vehicle belonged to the first respondent and the vehicle was insured with the second respondent. The manner of accident is wrongly narrated in the petition. The rider of the two wheeler was slow and cautious. It was the deceased, who tried to cross the road, without noticing the traffic and he invited the accident. The age, income and profession of the deceased are to be proved.

5. 2 witnesses were examined and 14 documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs. 4,15,000/- as compensation .

6. Against the award, the claimant has filed an Appeal in C.M.A.(MD)No. 320 of 2020 for enhancement. The Insurance Company has filed an appeal in C.M.A.(MD)No.606 of 2020.



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WEB COPY 7. A brief substance of the grounds of appeal in CMA(MD)No.320 of 2020, is as follows:-

The Tribunal failed to take note that a consolidated medical bill was issued by Vikram Multi Speciality Hospital, Madurai and the Tribunal is wrong in ignoring Ex.P5. The Tribunal failed to consider that the respondent-Insurance Company has not adduced any rebuttal evidence against Ex.P5 and Ex.P6. The Tribunal is wrong in fixing the daily income of the deceased as Rs.200/-. The Tribunal failed to consider that there was no objection in the counter regarding the statement that the deceased was earning Rs.700/- per day. The Tribunal failed to consider that the deceased was a fisher man and Ex.P14 was filed to prove the same. The monthly income should be fixed at Rs.20,000/- per month. The award to be enhanced to Rs.10,30,000/-.

8. A brief substance of the grounds of appeal in CMA(MD)No.606 2020, is as follows:-

The Tribunal failed to note that the first respondent-claimant alone was the dependant of the deceased. The Tribunal ought to have deducted 50% of the income of the deceased towards his own expenses. The Tribunal is wrong in fixing the entire liability on the appellant.



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9. For the sake of convenience, the word appellant is denoting the appellant/claimant in CMA(MD)No. 320 of 2020 and the word respondent is denoting the respondent / Insurance Company in CMA(MD)No.606 of 2020. CMA(MD)No.320 of 2020 is taken as a lead case.

10. Copy of the F.I.R. was marked as Ex.P1. Copy of the Insurance Policy was marked as Ex.P8. P.W.2 was examined as an eye witness. There is no rebuttal evidence on the side of the respondent-Insurance Company. In view of the above circumstances, the Tribunal fixed the responsibility on the rider of the two wheeler, which is reasonable.

11. On the side of the respondent / Insurance Company, it is stated that Ex.P3, Ex.P4 and Ex.P5 are medical bills and the amount stated in the Bills are allowed by the Tribunal and that Ex.P5 is the bill alleged to have been issued by the Vikram Hospital, only Xerox copy of the bill was marked as document and that the burden is on the side of the claimant to prove the bill and that the official from the Vikram Hospital was not examined and that though the respondent- Insurance Company questioned the validity of the Bill, the appellant-claimant has not taken any steps to prove the bill.



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12. Xerox copy of the bill issue by AASI Multispeciality Hospital was marked as Ex.P3 and Ex.P4. Consolidated Bills alleged to have been issued by the Vikram Hospital was marked as Ex.P5. The receipt for payment issue by the Vikram Hospital was marked as Ex.P6. The Tribunal rejected Ex.P5, on the ground that separate bills were not filed and only a consolidated bill was marked. The Tribunal awarded Rs.28,189/- and Rs.77,570/- towards medical expenses, on the basis of Ex.P3 and Ex.P4. Ex.P3 to Ex.P6 are all xerox copies. Original for this documents were not filed on the side of the claimant. It is the duty of the claimant to prove his case. Since the original documents are not marked and since officials from the Hospitals were not examined, it is decided that a sum of Rs.1,05,000/- awarded by the Tribunal towards medical expenses is reasonable.

13. On the side of the appellant-claimant, it is stated that the deceased was a fisher man and the I.D card for the fisher man was marked as Ex.P14 and that the Tribunal is wrong in fixing the daily income as Rs.200/- and the same is to be enhanced.

14. The Tribunal has fixed the monthly income as Rs.6,000/- per month. Considering Ex.P14 and considering the date of accident, the monthly income of the deceased is fixed as Rs.12,000/-.



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15. On the side of the appellant-claimant, it is stated that considering the number of the dependant only $1/3^{\text{rd}}$ of the income of the deceased ought to have been deducted towards his own expenses.

16. On the side of the respondent-Insurance Company, it is stated that the Tribunal is wrong in deducting $1/3^{\text{rd}}$ of the income towards the own expenses of the deceased. There is only one claimant mentioned in the petition. Hence, 50% of the income is to be deducted towards the own expenses of the deceased.

17. After deducting 50% (Rs.6,000/-) of the income, the deceased might have contributed Rs.6,000/- to his family. The age of the deceased at the time of accident is 68 years, multiplier '5' is to be applied. After applying multiplier '5', the loss of income is calculated as Rs.3,60,000/- (Rs.6,000/- X 12 X 5).

18. The Tribunal has awarded Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of articles, Rs.40,000/- towards loss of consortium, which are all reasonable.



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19. The total compensation is calculated as follows:-

Loss of income	:	Rs. 3,60,000/-
Funeral expenses	:	Rs. 15,000/-
Loss of articles	:	Rs. 15,000/-
Loss of consortium	:	Rs. 40,000/-
Medical expenses	:	Rs. 1,05,000/-
Total compensation	:	 Rs. 5,35,000/-

20. In the result, **CMA(MD)No.320 of 2020 is partly allowed and C.M.A(MD)No.606 of 2020 is dismissed.** The compensation is enhanced from Rs.4,15,000/- to **Rs.5,35,000/-**.

(i) The claimant is entitled to Rs.5,35,000/- as compensation.

(ii) The Insurance Company is directed to deposit the entire compensation of **Rs.5,35,000/-** (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost, within a period of eight weeks from the date of receipt of a copy of this order.



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WEB COPY (iii) On such deposit being made by the Insurance Company, the claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by her.

03.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Ls

To

1.The Motor Accident Claims Tribunal –
Principal District Judge,
Ramanathapuram.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)Nos.320 and 606 of 2020

03.03.2023