



C.M.A.(MD)No.711 of 2022

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.711 of 2022

Branch Manager
ICICI Lumboard General Insurance Company Limited
64, Nellai Plaza
Madurai Main Road,
Tirunelveli.

...Appellant/2nd Respondent

Vs.

1.Mary Seema
2.Minor Infant Nimas
*(Minor 2nd respondent represented by her
mother and natural guardian the first
respondent)*
3.Siluvai Raj
4.Susin

...1st to 4th Respondents/
Petitioners

5.Mary Latha
6.The Branch Manager,
United India Insurance Company Limited,
Kandan Complex,
Opposite of New Bus Stand,
Valliyoore.

...5th Respondent/1st Respondent

...6th Respondent/3rd Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records pertaining to the Fair and Decretal Order passed by the Motor Accident Claims Tribunal, Sub-Court,



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Valliyoor, in M.C.O.P.No.183 of 2016 dated 24.11.2021 and to set aside the same.

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For Appellant : Mr.P.Pethu Rajesh
For R1 to R4 : Mr.M.Laxmi Mahendran
For R6 : Mr.B.Rajesh Saravanan

JUDGMENT

Challenging the method adopted by the Tribunal, while calculating the compensation, the present appeal has been filed.

2.The Tribunal has awarded the compensation as follows:

S.No.	Description	Amount
1.	Compensation with multipliyer 17	Rs.23,46,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of love and affection	Rs. 1,00,000/-
4.	Loss of Estate	Rs. 50,000/-
5r.	Transportation Charges	Rs. 10,000/-
	Total	Rs.25,21,000/-

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

(i) on 29.09.2016, at about 1.15 p.m., while the deceased was riding the motorcycle bearing Registration No.TN74-Q-4091 from Kanniyakumari to



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Tirunelveli near Garmal Matha School in the extreme end of the road from south to north, a car bearing Registration No.TN74-X-1200 belonged to the first respondent driven by its driver in a rash and negligent manner and dashed against the motorcycle, as a result, the deceased sustained multiple injuries all over the body and succumbed to injuries. A case was registered against the driver of the first respondent in Crime No.410 of 2016 for the offence under Section 304(A) IPC. Hence, the compensation of Rs.80,00,000/- was claimed by the claimants.

(iii)The second respondent filed a counter affidavit before the Tribunal stating that there is no negligence on the part of the driver and the deceased without noticing, suddenly entered into the main road for crossing. The occupation and income of the deceased also denied.

(iv)The third respondent took a stand that only the first respondent driver of the car is negligent on the part of the accident.

4.The Tribunal, after analyzing the evidence fixed the negligence on the part of the driver of the first respondent and awarded a compensation. Challenging the said award, the present appeal is filed.



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5.The only aspect canvassed by the learned counsel appearing for the appellant is that while computing the net income, the Tribunal ought to have fixed the monthly income and then to add 40% of the income as future prospect and to deduct 1/4th from the total income towards personal expenses. Whereas, in the present case, the Tribunal has acted in reverse and had erroneously fixed the monthly income.

6.The learned counsel appearing for the respondent has fairly accepted the said mistake.

7.In the light of the above, now the following point raised for consideration in this appeal is:

Whether the Tribunal was right in deducting the amount without adding the future prospects?

8.At the time of the accident, the deceased was aged about 35 years, which is not in dispute before the Tribunal. The Tribunal has fixed the notional income of the deceased was Rs.10,000/-. However, the Tribunal, while calculating the monthly income, had deducted 1/3rd from the notional income and the monthly



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income arrived at Rs.4,000/- towards future prospect and determines loss of dependency to Rs.23,42,000/-. The Tribunal had erred in deducting the amount from the notional income. The Tribunal ought to have added 50% towards future prospects in the notional income and then deduction should have been made.

9. Such view of the matter, the compensation awarded towards loss of income is modified to the effect that the monthly income of the deceased is Rs.10,000/- and add 40% towards future prospects would come around Rs.4,000/- ($10,000 \times 40 / 100 = 4000$) the total income is Rs.14,000/- and $\frac{1}{4}$ th is deducted from the total income is Rs.3,500/- ($14,000 \times \frac{1}{4} = 3,500$) The total income would come around Rs.10,500/- ($14000 - 3500 = 10,500/-$). At the time of accident, the age of the deceased was 35 years, the multiplier of '17' will be applicable. The loss of income would come around Rs.21,42,000/- ($10,500 \times 17 \times 12$). The Tribunal has not awarded any compensation towards loss of consortium and parental consortium to all the petitioners. Hence, this Court has modified the said head and awarded Rs.75,000/- towards loss of consortium and parental consortium at Rs.25,000/- to the petitioners. The Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.10,000/- towards transportation charges and it is just and proper. Totally, the claimant is entitled to the compensation as stated below:



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S.No.	Description	Amount
1.	Loss of income	Rs.21,42,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of love and affection	Rs. 1,00,000/-
4.	Loss of consortium and parental consortium	Rs. 75,000/-
5.	Transportation Charges	Rs. 10,000/-
	Total	Rs.23,42,000/-

10.In fine, this Civil Miscellaneous Appeal is allowed and the award passed by the Motor Accidents Claims Tribunal/Sub-Court, Valliyoor, in M.C.O.P.No.183 of 2016, dated 24.11.2021, is hereby modified. The claimant is entitled to get Rs.23,42,000/- as compensation.

11.The appellant/Insurance Company is directed to deposit the compensation amount as modified by this Court with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization, 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 petitioner being a wife is entitled for a sum of Rs.10 lakhs with proportionate accrued interest and costs



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and the minor children is entitled to get Rs.8,42,000/- and the third and fourth petitioners are entitled to get Rs.2,50,000/- each with proportionate accrued interest and costs, less the amount if any already withdrawn, by making necessary application before the Tribunal. Insofar as the share of the minor claimant is concerned, the same shall be deposited in Fixed deposit in any one of the Nationalised Banks, till he attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. No costs. Consequently, connected miscellaneous petition is closed.

12.The learned trial Judge herein after should see that calculation would properly made, first of all to add future prospects along with the notional income, then the deduction should be made. The Registry is directed to make a copy of the judgment to the concerned District Judge.

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

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To

- 1.The Motor Accident Claims Tribunal,
Sub-Court, Valliyoor.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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