



C.M.A.(MD)No.725 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

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The Manager
ICICI Lumboard General Insurance Company Limited
(The name of the company is ICICI Lombard
General Insurance Company Ltd., but the same is wrongly
mentioned as ICICI Lombard National Insurance Company
Ltd.)
ICICI Lambord House,
414, Veersawarkar Mark,
Chitthinavinayakar Kovil Near
Prabhadevi, Mumbai

...Appellant/2nd Respondent

Vs.

1.Supriya
2.Minor Annaniya
(Rep by her mother and natural
Guardian the 1st Respondent)

3.Periyasamy
4.Emmiyammal

5.Minor Aadhiya
(Rep by her mother and Natural
Guardian the 1st Respondent)

...1to5 Respondents/ 1to5
Petitioners

6.The Chairman
Cape Institute of Technology

1/9



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Levingipuram, Radhapuram,
Tirunelveli District.

7.Vedha Manikam

8.The Branch Manager,
United India Insurance Company Ltd.,
Leela Balan Complex Main Road,
Kanniyakumari.

...7th & 8th respondents/3rd & 4th
Respondents

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, Subordinate Judge, Valliyoor in M.C.O.P.No.112 of 2015 dated 22.12.2021 and to set aside the same.

For Appellant	: Mr.P.Pethu Rajesh
For R1,R3& R4	: Mr.M.Laxmi Mahendran
For R7	: Mr.M.Karthikeya Venkitachalapathy
For R8	: Mr.V.Sakthivel
For R6	: No appearance

JUDGMENT

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



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2.The Tribunal has awarded the compensation as follows:

S.No.	Particulars	Amount
1.	Compensation with multiplier 18	Rs.29,80,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 50,000/-
4.	Loss of consortium	Rs. 2,00,000/-
5r.	Transport Charge	Rs. 10,000/-
	Total	Rs.32,55,800/-

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

(i) on 08.04.2015, at about 5.00 p.m., while the deceased was riding a two wheeler, which belongs to the seventh respondent herein, bearing Registration No.TN75-D-4824 towards north at the extreme end of the road near J.J.Nagar, Vattakottai Four ways, a college bus bearing Registration No.TN50-F-4444 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 on the way to hospital, the deceased died. A case was registered against the driver of the first respondent in Crime No.161/2015 for the offence under Sections 279 and 377 IPC. Hence, the compensation of Rs.50,00,000/- was claimed by the claimants.



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(iii)The first respondent filed a counter affidavit before the Tribunal stating that there is no negligence on the part of the driver and the lack of driving knowledge of the deceased, the accident was occurred. The occupation, age and income of the deceased also denied.

(iv)The second respondent took a stand that the accident had occurred only due to rash and negligent driving of both the drivers of the vehicle.

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.

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.



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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 27 years, which is not in dispute before the Tribunal. The Tribunal has fixed the notional income of the deceased was Rs.12,000/-. However, the Tribunal, while calculating the monthly income, had deducted 1/4th from the notional income and the monthly income arrived at Rs.3,000/- towards future prospect and determined loss of dependency to Rs.29,80,000/-. The Tribunal had erred in deducting the amount from the notional income. The Tribunal ought to have added 40% 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



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Rs.12,000/- and adding 40% towards future prospects would come around Rs. 4,800/- ($12,000 \times 40/100 = 4800$) the total income is Rs.16,800/- and $\frac{1}{4}^{\text{th}}$ is deducted from the total income is Rs.4,200/- ($16,800 \times 1/4 = 4,200$) The total income would come around Rs.12,600/- ($16,800 - 4200 = 12,600/-$). At the time of accident, the age of the deceased was 27 years, the multiplier of '17' will be applicable. The loss of income would come around Rs.25,70,400/- ($12,600 \times 17 \times 12$). The Tribunal has awarded a sum of Rs.50,000/- towards loss of estate is on the higher side. Hence, this Court has modified the said head and awarded a sum of Rs.15,000/- towards loss of estate. 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:

S.No.	Description	Amount
1.	Loss of income	Rs.25,70,400/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of estate	Rs. 15,000/-
4.	Loss of consortium	Rs. 2,00,000/-
5.	Transportation Charges	Rs. 10,000/-
	Total	Rs.28,10,400/-



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10.In fine, this Civil Miscellaneous Appeal is allowed and the award passed by the Motor Accidents Claims Tribunal/Subordinate Court, Valliyoor in M.C.O.P.No.112 of 2015 dated 22.12.2021, is hereby modified. The claimant is entitled to get Rs.28,10,400/- 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.12 lakhs with proportionate accrued interest and costs and the minor children are entitled to get Rs.5,00,000/- each and the third and fourth petitioners are entitled to get Rs.3,05,200/- 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 they attain 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.



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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.

16.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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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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N.SATHISH KUMAR, J.

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