



C.M.A.(MD)No.1230 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1230 of 2022
and
C.M.P.(MD)No.12728 of 2022

ICICI Lombard General Insurance Company Limited.,
Zenith House, Keshacarao Kahde Marg,
Mahalakshmi, Mumbai-400 034,
Rep. by its Branch Manager.

...Appellant/2nd Respondent

Vs.

1.Jeyapratha

2.Minor Kiruthika

3.Minor Kisharth

(Minor 2 and 3 respondents represented by their mother and natural guardian the
1st respondent)

4.Saraswathi

... Respondents 1-4 /

Petitioners (Claimants)

5.S.Rajesh

...5th Respondent/1st 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, learned Additional District Judge, Theni in M.C.O.P.No.53 of 2015, dated 24.04.2019 and set aside the same by allowing the appeal.



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C.M.A.(MD)No.1230 of 2022

For Appellant : Mr.P.Pethu Rajesh

For Respondents : No Appearance

JUDGMENT

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal / Additional District Court, Theni in M.C.O.P.No.53 of 2015, dated 24.04.2019, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

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

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

(i)the deceased was travelling as a cleaner in a TATA ACE LMV vehicle bearing Registration No.TN-60-T-9218 belonging to the first respondent. The driver of the said vehicle drove the same in a rash and negligent manner and dashed against the TNSTC bus bearing Registration No.TN-58-N-1235, which was halted at the bus stop, from the behind. As a result, the deceased died at the spot itself.



C.M.A.(MD)No.1230 of 2022

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(ii) the first claimant is the wife of the deceased, the second and third claimants are the children of the deceased and the fourth claimant is the mother of the deceased. At the time of accident, the deceased was aged about 28 years and earning a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) per month. Therefore, claiming a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) as compensation, the claimants had filed the petition.

4. It is the case of the second respondent / Insurance Company before the Tribunal that the driver of TNSTC bus stopped the bus without giving any signal to the vehicles, which were coming back side of it. Further, the deceased was travelling as an unauthorized passenger. Therefore, the 2nd respondent is not liable to pay any compensation to the claimants. The 1st respondent and TNSTC Bus Management are all liable to pay compensation to the claimants.

5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondents, R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R2 were marked.



C.M.A.(MD)No.1230 of 2022

6.The Tribunal, considering the evidence of P.W.1 and P.W.2, found that the driver of the TATA Ace Vehicle had driven the vehicle in a rash and negligent manner and caused the accident and awarded the compensation as follows:

S.No.	Description	Amount
1.	Transportation for taking the body	Rs. 5,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of consortium of first petitioner	Rs. 40,000/-
4.	Loss of love and affection to minors P2 and P3 each Rs.50,000/-	Rs. 1,00,000/-
5.	Loss of love and affection	Rs. 25,000/-
6.	Maintenance of Minors P2 & P3 till they attains majority each Rs.1,00,000/-	Rs. 2,00,000/-
7.	Loss of estate	Rs. 15,000/-
8.	Loss of Dependency	Rs.25,70,400/-
	Total	Rs.29,70,400/-

7.Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

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



C.M.A.(MD)No.1230 of 2022

9.The learned counsel appearing for the appellant submitted that the Tribunal ought not to have fixed the income of the deceased at R.12,000/- (Rupees Twelve Thousand Only) per month without any basis. The accident was occurred only in the year 2013. Therefore, the notional income ought to have been fixed at only Rs.9,000/- (Rupees Nine Thousand Only).

10.Despite service of notice, none appeared on behalf of the respondents.

11.In view of the above submission, now, the points that arises for consideration in this appeal are:

(1) Whether the Tribunal is right in fixing the notional income of the deceased at Rs.12,000/-? and

(2)Whether the quantum arrived by the Tribunal is just and reasonable?

12.Admittedly, the accident and the negligence is not disputed. Only the quantum of compensation is challenged in this appeal. The deceased was aged about 28 years at the time of accident. Though there is no evidence to prove the income of the deceased at the relevant point of time, the Tribunal came to a



C.M.A.(MD)No.1230 of 2022

conclusion that the deceased, being 28 years old, would have easily earned a sum of Rs.12,000/- per month by applying the minimum wages. He was working as a cleaner. Apart from the monthly salary, the persons, who are working as Driver and Cleaner will get regular batta also and the same could not be ignored altogether. Hence, fixation of a sum of Rs.12,000/- as income of the deceased does not appear to be an excessive. The Tribunal had rightly applied 40% future prospects by taking note of the age of the deceased and deducted 1/4 of his income towards his personal expenses and finally, awarded a sum of Rs.29,70,400/- (Rupees Twenty Nine Lakhs Seventy Thousand and Four Hundred Only) as compensation. These aspects do not require any interference by this Court.

13.As far as the conventional damages is concerned, the Tribunal awarded compensation under the heads of loss of consortium and loss of love and affection to the minors and also to the fourth respondent. That apart, a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) was awarded towards maintenance of minor children, till they attain majority.

14.This Court is of the view that though a sum of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand Only) was awarded to the minor children



C.M.A.(MD)No.1230 of 2022

and the mother of the deceased / claimants 2 to 4 under the head 'Loss of Love and Affection', a sum of Rs.2,00,000/- was awarded once again towards maintenance of claimants 2 and 3 and hence, the same is required to be set aside. Accordingly, the amount awarded under the head 'Maintenance of Minor children' is set aside and the compensation awarded by the Tribunal is modified as follows:-

S.No.	Description	Amount
1.	Transportation for taking the body	Rs. 5,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of consortium of first petitioner	Rs. 40,000/-
4.	Loss of love and affection to minors P2, P3 & P4 each Rs.40,000/-	Rs. 1,20,000/-
5.	Loss of estate	Rs. 15,000/-
6.	Loss of Dependency	Rs.25,70,400/-
	Total	Rs.27,65,400/-

15.The appellant Insurance Company is directed to deposit the compensation amount i.e., Rs.27,65,400/- (Rupees Twenty Seven Lakhs Sixty Five Thousand and Four Hundred 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.53 of 2015, on the file of the Motor Accident Claims Tribunal / Additional District Court, Theni within a period of one month from the



C.M.A.(MD)No.1230 of 2022

date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the first claimant is entitled to a sum of Rs.13,00,000/- (Rupees Thirteen Lakhs only), the second and third claimants are entitled to a sum of Rs.6,50,000/-, each (Rupees Six Lakhs and Fifty Thousand only) and the fourth petitioner is entitled to a sum of Rs.1,65,400/- (Rupees One Lakh Sixty Five Thousand and Four Hundred only). The claimants are permitted to withdraw the said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. The share of the minor claimants shall be deposited in any one of the Nationalized Bank, till the minor claimants attain majority. The guardian of the minor claimants is entitled to withdraw the interest once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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C.M.A.(MD)No.1230 of 2022

To

1.The Motor Accident Claims Tribunal/
Additional District Court, Theni.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1230 of 2022

N.SATHISH KUMAR, J.

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C.M.A.(MD)No.1230 of 2022

06.04.2023