



C.M.A.(MD)No.282 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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- 1.Ganapathiammal
- 2.Minor Muruga Prasath
- 3.Minor Sudalai Kavitha
- 4.Chinnathai
- 5.K.Piramudaiyan

...Appellant/Petitioners

Vs.

- 1.Nagarajan
- 2.The New India Assurance Company Ltd.,
Through its Branch Manager,
1st Floor, B Wing, SPS Building,
No.185, Annasalai,
Chennai-600 002.

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in M.C.O.P.No.1889 of 2018 on the file of the Motor Accident Claims Tribunal, (Special Sub Court Dealing with MCOP Cases), Tirunelveli, dated 03.03.2022.

For Appellant : Mr.T.Selvakumaran
For R1 : Mr.S.Anandhakumar
For R2 : Mr.S.Sarvagan Prabhu

JUDGMENT



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This appeal has been filed seeking enhancement of compensation awarded by the Motorcycle Accident Claims Tribunal in M.C.O.P.No.1889 of 2018, dated 03.03.2022.

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)On 13.04.2018 at about 09.30 a.m., the deceased was riding his two wheeler bearing Registration No.TN-76-Y-9082. At that time, the TVS Sport motorcycle bearing Registration No.TN-67-AQ-1118 insured with the second respondent came in an opposite direction rashly and negligently in the wrong side and hit against the motorcycle of the deceased. As a result, the deceased succumbed to injuries.

(ii)The first claimant is the wife of the deceased. The second and third claimants are the children of the deceased and the fourth and fifth claimants are the parents of the deceased. The deceased was aged about 42 years. He was



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working as a Mill Operator and earning a sum of Rs.11,500/- per month. Hence, the claimants have filed the claim petition seeking compensation.

(iii)The second respondent before the Tribunal took a stand that the deceased while overtaking another vehicle, entered into the side of the first respondent motorcycle and the deceased could not able to control his vehicle due to his rash driving and dashed against the first respondent. Hence, only the deceased had invited the accident.

4.Before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P13 were marked. On the side of the respondents no oral and documentary evidence were marked.

5.The Tribunal after analyzing the evidence of P.W.1 and P.W.2 had found that only the rider of the offending motorcycle was rash and negligent and fixed the monthly income of the deceased at Rs.9,000/- and awarded the compensation as follows:

S.No.	Heads	Amount
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1.	Loss of Income	Rs.14,17,584/-
2.	Loss of consortium	Rs. 44,000/-
3.	Loss of Estate	Rs. 16,500/-
4.	Loss of Expenses	Rs. 16,500/-
	Total	Rs.14,95,584/-

6.The learned counsel for the appellants submitted that the deceased was working as a Mill Operator and he was earning a sum of Rs.11,500/- per month. Ex.P9 and Ex.P10, identity card and the statement of accounts of the deceased were produced to substantiate the same. However, the Tribunal without considering the same, had fixed the notional income of the deceased at Rs.9,000/- and the same has to be enhanced.

7.The learned counsel for the respondents would submit that though the identity card and bank account statements were produced by the claimants, the salary bill or salary register of the deceased has not been produced to substantiate the contention of the claimants. Hence, the income fixed by the Tribunal does not warrant any interference and seeks to dismiss the present appeal.



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

Whether the Tribunal is right in fixing the notional income of Rs.9,000/-?

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

10.Admittedly, the deceased was aged about 42 years and he was working in the Subburaj Textile Mills (P) Ltd., as a Mill Operator. Though Ex.P10 was filed to show that the deceased was drawing the salary of Rs.11,500/-, the Tribunal taking note the divergence in the statement of accounts of the deceased, had fixed the notional income of the deceased at Rs.9,000/-. This Court is of the view that when the fact that the deceased was working in a Mill is admitted and established by valid materials, merely because there is some divergence in the account statements, the Tribunal ought not to have fixed the monthly income of the deceased at Rs.9,000/-. Even minimum wages rule is applied, the deceased would have earned a sum of Rs.12,000/- per month.

11.In such view of the matter, this Court fixes the notional income of the deceased at Rs.11,000/- (Rupees Eleven Thousand only). Considering the age of the deceased, if 25% (Rs.2,750/-) future prospects is added, the monthly income



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would come around Rs.13,750/-. Since there are four claimants, 1/4 (Rs.3,478/-) deduction is applied. Accordingly, the monthly income of the deceased is fixed at Rs.10,312/-. As per the dictum laid down by the Hon'ble Supreme Court in ***Sarala Varma and Others vs. Delhi Transport Corporation and another*** reported in ***2009 6 SCC page [2]***, if multiplier 14 is adopted, the loss of income of the deceased would come around Rs.17,32,416/- (Rupees Seventeen Lakhs Thirty Two Thousand Four Hundred and Sixteen only). The compensation awarded by the Tribunal under other heads is hereby confirmed. In the result, the claimants are entitled to the compensation as follows:

S.No.	Heads	Amount
1.	Loss of Income	Rs.17,32,416/-
2.	Loss of consortium	Rs. 44,000/-
3.	Loss of Estate	Rs. 16,500/-
4.	Loss of Expenses	Rs. 16,500/-
	Total	Rs.18,09,416/-

12.Accordingly, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is enhanced as stated above.

13.The Insurance company is directed to deposit the entire compensation i.e.,Rs.18,09,416 /- (Rupees Eighteen Lakhs Nine Thousand Four Hundred and Sixteen only) as modified by this Court with interest at the rate of 7.5% from the



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date of petition till the date of realization to the credit of M.C.O.P.No.1889 of 2018, on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli 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 entitled to Rs.5,09,416/- (Rupees Five Lakhs Nine Thousand Four Hundred and Sixteen only) the second and third claimants are permitted to withdraw a sum of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only) each and the fourth and fifth claimants are entitled to withdraw a sum of Rs.1,00,000/-, (Rupees One Lakh only) each, 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.

22.06.2023

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/
Special Sub Court dealing with MCOP Cases, Tirunelveli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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