



C.M.A. (MD)No.666 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.666 of 2022
and C.M.P.(MD)No.5712 of 2022

The Divisional Manager,
United India Insurance Company Limited,
Door No.146/M, Kumar Complex,
2nd Floor, Anna Salai, Thirusenkoodu,
Namakkal District.

... Appellant / 2nd Respondent

Vs.

1.Moorthy
2.M.Mariyammal
3.Bhuvaneswari
4.Santhoskumar

... Respondents 1 to 3 /
Petitioners

... 4th Respondents / 1st respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.112 of 2018, dated 13.12.2021 on the file of the Motor Accident Claims Tribunal, Fast Track Mahila Court, Sivagangai.

For Appellant

: Mr.J.S.Murali

For Respondents

: Ms.P.Selvakamatchi for R1 to R3



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JUDGMENT

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Challenging the judgment and decree passed by the Motor Accident Claims Tribunal, Fast Track Mahila Court, Sivagangai in M.C.O.P.No.112 of 2018, dated 13.12.2021, the appellant – Insurance Company has filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking before the Tribunal.

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

The deceased Vinoth was a bachelor and aged about 24 years and he was earning a sum of Rs.25,000/- per month, by working as a Driver and also attending the repair works on Refrigerator and Air Conditioner. On 12.05.2018, at about 8.00 p.m., while the deceased was driving his Two wheeler, bearing Reg.No.TN-63-AK-2143 in the Thanjavur to Manamadurai National Highway, a Borewell Lorry, bearing Registration No.TN-02-F-8329, came from the opposite direction in a rash and negligent manner and dashed against the Two Wheeler. As a result, the deceased was thrown away and succumbed to injuries. Hence, the



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petitioners, who are the parents and sister of the deceased, have filed the claim petition.

4. The 2nd respondent – Insurance Company has not disputed the accident, but only disputed the income of the deceased.

5. Before the Tribunal, on the side of the petitioners, two witnesses were examined as P.W.1 and P.W.2 and 12 documents were marked as Ex.P1 to Ex.P12. On the side of the 2nd respondent – Insurance Company, no evidence was adduced and no document was marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, has fixed the following compensation with interest at the rate of 7.5% per annum:

S.No	Heads	Amount
1.	Loss of income / dependency	Rs.24,19,200/-
2.	Funeral Expenses	Rs. 26,000/-
3.	Love and affection	Rs. 1,50,000/-
4.	Parental Consortium	Rs. 80,000/-
5.	Loss of Estate	Rs. 2,800/-
	Total	Rs.26,78,000/-



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Challenging the same, the present Civil Miscellaneous Appeal has been filed by the 2nd respondent – Insurance Company / Appellant.

7. The learned counsel appearing for the 2nd respondent – Insurance Company / appellant has not disputed the negligent aspect. However, he has disputed only the quantum of compensation awarded by the Tribunal. The learned counsel appearing for the 2nd respondent – Insurance Company / appellant submitted that the Tribunal has fixed the notional income of the deceased at Rs. 12,000/-, which is on the higher side. Besides, the Tribunal has deducted 1/3rd towards personal expenses instead of deducting 1/2. That apart, the Tribunal has also awarded excess amount towards funeral expenses and parental consortium. Hence, the compensation awarded by the Tribunal is liable to be reduced.

8. The learned counsel appearing for the petitioners 1 to 3 / respondents 1 to 3 submitted that the Tribunal has rightly arrived the monthly income of the deceased at the rate of Rs.12,000/-, based on Ex.P12-salary certificate issued by the employer. Therefore, the notional monthly income fixed by the Tribunal at Rs. 12,000/-, particularly when the accident took place in the year 2018, cannot be found fault with. However, in respect of the deduction made by the Tribunal, the



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learned counsel appearing for the petitioners 1 to 3 / respondents 1 to 3 has fairly submitted that the deduction ought to have been made at the rate of 50% since, the deceased was a bachelor.

9. In view of the above submissions, now the points arise for consideration in this appeal are as follows:

1. Whether the Tribunal is correct in fixing the notional income at Rs.12,000/- per month?

2. Whether the Tribunal is right in awarding the compensation as arrived by it?

10. On a perusal of the evidence, it is seen that the deceased was aged about 24 years and to substantiate the same, Ex.P4 to Ex.P6 have been filed. Besides, to prove the salary of the deceased, an independent witness was examined as P.W.2, who is the employer of the deceased, through him Ex.P12-salary certificate was marked. Though a sum of Rs.15,000/- salary have been found place in Ex.P12-salary certificate, the Tribunal considering the age and avocation of the deceased, fixed the notional monthly income of the deceased at Rs.12,000/-. Therefore, this



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Court is of the view that, considering the extra curricular activities and the skills owned by the deceased and he was also working as a Driver under SKM Lorry service, the notional income fixed by the Tribunal at Rs.12,000/- per month, cannot said to be excessive one. Accordingly, the same does not require any interference and a sum of Rs.12,000/- is taken as the notional income of the deceased and if 40% is added towards future prospects, the notional income would come at Rs.16,800/- and if $\frac{1}{2}$ is deducted towards personal expenses, the income would come at Rs.8,400/-. Since the deceased was aged about 24 years, the correct multiplier is '18'. Hence, if '18' multiplier is applied, the total loss of income / dependency would come at Rs.18,14,400/- ($8,400 \times 12 \times 18$). Further, the Tribunal has awarded a sum of Rs.26,000/- towards funeral expenses, which is on the higher side. Hence, a sum of Rs.15,000/- is fixed towards funeral expenses. The Tribunal has awarded a sum of Rs.1,50,000/- towards loss of love and affection to all the three petitioners, which is on the higher side. Hence, a sum of Rs.40,000/- each to the petitioners 1 to 3 is awarded towards loss of love and affection. Though a sum of Rs.1,50,000/- has been awarded towards loss of love and affection, the Tribunal has awarded a sum of Rs.80,000/- towards parental consortium, which is unreasonable and therefore, the same is hereby deleted. The Tribunal has awarded a sum of Rs.2,800/- towards loss of estate, which is very low



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and therefore, the same is enhanced to Rs.15,000/-. Accordingly, the modified compensation is as follows:

S. No	Heads	Amount
1.	Loss of income / dependency	Rs.18,14,400/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Love and affection	Rs. 1,20,000/-
4.	Loss of Estate	Rs. 15,000/-
	Total	Rs.19,64,400/-

Accordingly, the compensation is reduced from Rs.26,78,000/- to Rs.19,64,400/-

11. In the result, this Civil Miscellaneous Appeal is allowed and the petitioners 1 to 3 / respondents 1 to 3 are entitled to get a sum of Rs.19,64,400/ (Rupees Nineteen Lakhs Sixty Four thousand and Four hundred only) as compensation. Out of the said amount, the second petitioner / respondent No.2 , who is the mother of the deceased is entitled to get a sum of Rs.10 lakhs and the petitioners 1 and 3, who are the father and sister of the deceased respectively, are entitled to get a sum of Rs.4,82,200/- each.



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12. The 2nd respondent / Insurance Company is directed to deposit the modified compensation of Rs.19,64,400/ (Rupees Nineteen Lakhs Sixty Four thousand and Four Hundred only) with accrued interest at the rate of 7.5% from the date of petition till the date of deposit and costs within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount if any already deposited. The petitioners may approach the Tribunal for withdrawal of the said amount, for filing necessary application and if such an application is filed, the Tribunal shall pass orders for withdrawal. The excess amount, if any, shall be refunded to the 2nd respondent – Insurance Company. No Costs. Consequently, connected miscellaneous petition is closed.

28.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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- To
- 1.The Motor Accident Claims Tribunal,
Fast Track Mahila Court, Sivagangai.
 - 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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