



C.M.A(MD)No.1133 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

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1.Thangavel

2.Leelavathi

3.Sivakumar

... Appellants

.vs.

1.K.Sakthimurugan

2.The Branch Manager,
The United India Insurance Company Ltd.,
No.74A, Salai Road,
Thillai Nagar,
Trichirapalli-18.

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to modify the order dated 06.10.2021 in M.C.O.P.No.600 of 2019 on the file of the Motor Accidents Claims Tribunal/Special District Court, Trichirapalli and enhance the compensation of Rs.10,07,200/-.



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For Appellants : Mr.N.Sundhagar Nagaraj
For R2 : Mr.Royce Emmanuvel
For R1 : No appearance

JUDGMENT

This appeal is filed seeking enhancement of compensation awarded in M.C.O.P.No.600 of 2019 on the file of the Motor Accident Claims Tribunal/Special District Court, Trichirapalli.

2. The appellants /claimants filed the claim petition claiming compensation of Rs.25,00,000/- for the death of deceased Mohan in a road traffic accident. It is stated in the claim petition that on 01.05.2019 at about 08.45 hours, the deceased Mohan was riding his two wheeler bearing Registration No.TN-49-BW-8125 from Ramareddiyapatti towards Kalpatti Chathiram. When he reached Kaliamman Kovil, the first respondent's Scorpio Car bearing Registration No. TN-04-AC-8344 had come from the same direction in a rash and negligent manner and dashed against the two wheeler. As a result, the deceased was thrown out and sustained fatal injuries and died of the injuries. He was a driver by



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profession and was earning a sum of Rs.25,000/- per month. The claimants are the parents and younger brother of the deceased. They are dependents on the deceased for their living. Thus, this petition is filed.

3. This claim petition was resisted on the ground that the insurer of the two wheeler is not added as respondent. The deceased was alone responsible for the accident. The claim made is excessive.

4. During the enquiry before the Tribunal, on the side of the appellants, P.W.1 to P.W.4 were examined and Ex.P1 to Ex.P12 were marked. No oral and documentary evidence was produced on the side of the respondents. Ex.X1 to Ex.X9 were also marked.

5. Considering the oral and documentary evidence, the learned Tribunal awarded a compensation of Rs.14,92,800/- to the appellants. This is under challenge now.

7. The learned counsel for the appellants submitted that the deceased was a driver and earning a sum of Rs.25,000/- per month, however, the learned Tribunal had adopted a notional income of



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Rs.9,000/- alone. This is too low. He prayed this Court to compute the compensation on the basis of the judgment of this Court in *Andal and others vs. Avinav Kannan and others* reported in **2019 (1) TN MAC 54(DB)**.

8. In response, the learned counsel for the second respondent submitted that there is no proof filed to show that the deceased was a driver and was earning his capacity as driver. Ex.B5, Ex.X1 and the evidence of P.W3 are self serving and they cannot be relied. The Tribunal had rightly refused their evidence and fixed Rs.9,000/- as notional income. This needs to no interference. Thus, he prays for dismissal of this appeal.

9. Considered the rival submissions and perused the records.

10. The only question that has been decided in this appeal is,

“Whether a sum of Rs.9,000 fixed as notional income for the deceased is just and reasonable?”



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11. In the judgment relied on by the learned counsel for the appellants, this Court has adopted a formula for arriving at notional income based on the Cost of Inflation Index. That was the case where a meat chopper died in an accident and he was aged about 48 years. In the case before hand, though the claimants claimed that the deceased was a driver and was earning a sum of Rs.25,000/- per month, the xerox copy of the driving licence of the deceased shows that he was given licence only to drive non-transport vehicle. With this licence, he cannot drive a transport vehicle and earn money. In the said circumstances, he cannot be considered as a person earning with his driving skills. However, considering the fact that the deceased was only 25 years and he has a long years of existence, had the accident not happened, this Court is of the view that with his physical powers and youthful energy, he could have earned not less than Rs.12,000/- per month by doing physical labour. Thus, this Court deems it fit to fix Rs.12,000/- per month as notional income of the deceased. As per the decision in ***Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)***, 40% of this amount is to be added towards future prospects and it comes to Rs.4,800/-. Thus, the notional income of the deceased is fixed at Rs.16,800/- per month. He was a bachelor. Thus, 50% of the amount



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should be deducted towards his personal income and it comes to Rs.8,400/-. The proper multiplier for computing loss of dependency is 18. Thus, the total loss of dependency comes to Rs.18,14,400/-. The details of calculation are as follows:-

$$\text{Rs.8,400} \times 18 \times 12 = \text{Rs.18,14,400/-}.$$

The compensation awarded under the other heads are retained.

12. In view of the discussions held above, this Court modifies the compensation awarded by the Tribunal, as under:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	Loss of dependency	Rs.13,60,800/-	Rs. 18,14,400/-	enhanced
2	Transport Charges	Rs.7,000/-	Rs.7,000/-	same
3	Loss of Estate	Rs.10,000/-	Rs.10,000/-	same
4	Loss of filial consortium	Rs.1,05,000/-	Rs.1,05,000/-	same
5	Funeral Expenses	Rs.10,000/-	Rs.10,000/-	same
	Total	Rs.14,92,800/-	Rs.19,46,400/-	Enhanced

13. In fine, the Civil Miscellaneous Appeal is allowed in part and the award amount is enhanced from Rs.14,92,800/- to Rs.19,46,400/-



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with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the above said enhanced award amount with accrued interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first appellant is entitled to a sum of Rs.7,00,000/-, the second appellant is entitled to a sum of Rs.10,46,400/- and the third appellant is entitled to a sum of Rs.2,00,000/- with proportionate interests and costs. The appellants are permitted to withdraw their respective shares along with interest, after following due process of law. Registry is directed to draft the decree in this appeal only after payment of excess Court fee, if any, towards the enhanced award amount, before the Registry. No costs.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
cp

14.12.2023

To

The Motor Accidents Claims Tribunal/
Special District Court,
Trichirapalli.



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G.CHANDRASEKHARAN,J.

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