



C.M.A.(MD)No.555 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

C.M.A.(MD)No.555 of 202

1.R.Murugeswari
2.S.Umagurulakshmi
3.R.Mariammal

...Appellants/Claimants

Vs.

1.G.Kanagaraj
2.M.Mathankumar
3.Thr Branch Manager,
New India Assurance Company Limited,
No.42, Periyakulam Road,
Near Arun Motors,
Theni-625 531

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order and decree made in M.C.O.P.No. 20 of 2018 dated 07.04.2022 on the file of the Principal District Court/Motor Accident Claims Tribunal, Virudhunagar District, Srivilliputtur.

For Appellant : Mr.T.Arun Ganesh
For R3 : Mr.C.Karthick
For R1 & R2 : No appearance



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JUDGMENT

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Challenging the quantum of compensation awarded by the Tribunal, the present Civil Miscellaneous Appeal is filed.

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

(i) For the sake of convenience, the parties are referred to herein, as the first petitioner is the wife of the deceased Ramar, the second petitioner is their daughter and third petitioner is the mother of the deceased.

(ii) on 27.07.2016, at about 06.30 p.m., while the deceased was riding as a pillion rider in the motorcycle bearing Registration No.TN67-AB-6680 from Rajapalayam to Attaimill Road, near Sengampati Harish School from west to east direction, a INNOVA Car bearing Registration No.TN-45-AF9609 belonging to the second respondent driven by its driver in a rash and negligent manner and dashed against the motorcycle, as a result, the deceased was thrown out from the motorcycle. The deceased sustained grievous head injuries and the another person, who was riding the motorcycle has sustained injuries on his left and right knee, shoulder and right thigh. Hence, they were admitted in Government



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Hospital, Rajapalayam for treatment. The deceased died, while he was taking treatment at Hospital. A criminal case was also registered against the driver of the second respondent for the offence under Section 279, 377 and 304(A) IPC. Hence, the compensation of Rs.30,00,000/- was claimed by the claimants.

(iii)The third respondent filed a counter affidavit before the Tribunal stating that there is no permit and valid driving licence for the driver of the car. Fitness Certificate of insured vehicle has also been expired on 09.10.2015. It is further stated that two wheeler was not insured with any Insurance Company and the rider of the two wheeler did not possess valid driving licence. Hence, there is a violation of policy, the third respondent is not liable to pay any compensation to the claimants.

4. Before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P14 were marked. On the side of the respondents R.W.1 to R.W.3 were examined and Ex.R.1 to Ex.R.5 were marked.

5.The Tribunal, after analyzing the entire evidence available on record, found that the car driver of the first respondent was negligent in driving the car and he was responsible for the accident and awarded the compensation as follows:



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S.No.	Description	Amount
1.	Loss of income	Rs.18,25,200/-
2.	Loss of Love and affection	Rs. 50,000/-
3.	Funeral Expenses	Rs. 10,000/-
4.	Transport Expenses	Rs. 10,000/-
	Total	Rs.18,95,200/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the claimants.

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

7.The learned counsel appearing for the appellant would submit that the Tribunal has fixed the notional income of the deceased was Rs.9,000/-, which is very less amount at the relevant point of time. According to the learned counsel, the accident took place in the year 2016, the notional income of the deceased, can be taken as RS.13,500/- and the same has to be adopted and enhanced the compensation towards loss of income. The learned counsel further submitted that the Tribunal has not awarded any compensation towards loss of consortium and



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funeral expenses. Hence, he prays for enhancement of compensation.

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8.The learned counsel appearing for the third respondent would submit that the Tribunal has not deducted 1/3rd for personal expenses and further there is no evidence to show that the deceased was earning Rs.15,000/- as monthly income. The Tribunal has rightly fixed a sum of Rs.9,000/- as notional income and hence, he opposed the appeal.

9.In view of the above submission, now the point that arose for consideration in this appeal is:

(1) *Whether the quantum awarded by the Tribunal is proper?*

10.It is not in dispute that the accident took place. As regards the negligence fixed on the first respondent, the Tribunal, considering the violation of policy condition ie., there is no driving licence as well as the fitness certificate to the offending vehicle, has directed the Insurance Company to pay the compensation and recover the same from the second respondent. The question raised in this appeal is whether the quantum fixed by the Tribunal is proper?.



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11. It is the evidence of P.W.1 that the deceased was doing the business of supplying the rice and was earning Rs.13,000/- per month. The same has not been substantiated to by any evidence. Therefore, the Tribunal has fixed a sum of Rs.9,000/- as notional income. It is relevant to note that in the year 2016, by applying Cost Inflation Index, the notional income would come around Rs. 12,798/-, ie., $(6,500 \times 254/129 = 12,798/-)$. This Court is of the view that the said amount, as per Cost Inflation Index would be proper and just. At the time of the accident, the deceased was aged about 48 years and 25% towards future prospects is added to that amount. The total amount would come around Rs.15,997/- $(12,798 \times 25/100)$, in which, 1/3rd is deducted towards personal expenses and the total amount would come around Rs.10,665/- $(15,997 - 5332)$. Since the age of the deceased was 48 years, the multiplier '13' will be applicable. The total amount of loss of income is Rs.16,63,740/- $(10,665/- \times 12 \times 13)$. The Tribunal has failed to award compensation towards consortium. Therefore, the petitioners are entitled to get a sum of Rs.1,20,000/- towards consortium and parental consortium, instead of love and affection as ordered by the Tribunal. Totally, the claimants are entitled to get the compensation as stated below:



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S.No.	Head	Amount
1.	Loss of income	Rs.16,63,740/-
2.	Loss of Consortium	Rs. 1,20,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Transportation	Rs. 15,000/-
	Total	Rs.18,13,740/-

12. In fine, this Civil Miscellaneous Appeal is disposed of and the award of the Tribunal is modified as stated above.

13. The third respondent/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 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 is entitled to get Rs. 10,00,000/- (Rupees Ten Lakhs only) with accrued interest and costs. The petitioners 2 and 3 are entitled to get Rs.4,06,870/- (Rupees Four Lakhs Six Thousand Eight Hundred and Seventy only) each with accrued interest and costs, less the amount if any already withdrawn, by making necessary application before



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the Tribunal. No costs.

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14. It is to be noted that the Principal District Judge, has not even deducted the compensation which indicates that he has passed the order mechanically without adverting to the settled position of law. The trial Judge, hereinafter shall follow the fundamental principles in awarding the compensation. Registry is directed to place the copy of this order to the concerned District Judge.

16.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Principal District Court/
Motor Accident Claims Tribunal,
Virudhunagar District, Srivilliputtur.

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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