



C.M.A.(MD)No.415 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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- 1.Sathiyakala
- 2.Maruvarasi
- 3.Minor Mathanraj
- 4.Minor Ponraj
- 5.Apoorvam

...Appellants/Petitioners

[minors 3rd and 4th appellants are represented by their mother first appellant]

Vs.

- 1.Anwar Batcha
- 2.The United India Insurance Company Limited,
by its Divisional Manager,
Thanjavur.

...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.1288 of 2019 on the file of the Motor Accident Claims Tribunal, (Special District Court) Thanjavur, dated 24.02.2021.

For Appellant : Mr.G.Karnan

For R2 : Mr.A.Shajahan



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JUDGMENT

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The present Civil Miscellaneous Appeal is filed seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal/Special District Court, Thanjavur in M.C.O.P.No.1288 of 2019 dated 24.02.2021.

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 29.04.2019, the deceased was riding his motorcycle. At that time, the driver of the lorry belonging to the first respondent bearing Registration No.TN-45-H-1010 drove the lorry in a rash and negligent manner and dashed against the two wheeler. As a result, the deceased succumbed to injuries.

(ii)The first claimant is the wife of the deceased. The claimants 2 to 4 are the children of the deceased and the fifth claimant is the mother of the deceased. The deceased was working as a Mason and earning a sum of



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Rs.25,000/- per month. Hence, the legal heirs of the deceased had filed the claim petition seeking compensation.

(ii)The Insurance Company before the tribunal took a stand that only the deceased was negligent in driving his two wheeler. Further, the deceased had no valid driving license at the relevant point of time. Hence, opposed the claim petition.

4. Before the Tribunal, on the side of the claimant P.W.1 and P.W.2 were examined and Ex.P1 and Ex.P16 were marked. On the side of the respondents no witness was examined and Ex.R1 to Ex.R4 were marked.

5.The tribunal on appreciation of entire evidence available on record found that the driver of the lorry was rash and negligent in driving the lorry and fixed 90% negligence on the part of the driver of the lorry and 10% on the part of the deceased, since he did not have any valid license and awarded the compensation as follows:



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S.No.	Description	Amount
1.	Loss of income	Rs.10,53,000/-
2.	Loss of consortium	Rs. 40,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Loss of estate	Rs. 15,000/-
5.	10% of increment towards future prospects once in three years	Rs. 7,000/-
	Total	Rs.11,30,000/-

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

6.The learned counsel for the appellant would submit that the Tribunal had erred in fixing the income of the deceased at the rate of Rs.8,000/-, despite the fact that the deceased was working as a Mason and was earning a sum of Rs.25,000/- per month. Further, the Tribunal had not awarded any compensation towards loss of love and affection to the minor child.

7.The learned counsel for the Insurance Company submitted that the Tribunal having held that the deceased did not wear helmet at the relevant point of time fixed only 10% of contributory negligence on the part of the deceased and the same has to be increased.



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

(1)Whether the income fixed by the Tribunal is proper?

(2)Whether the Tribunal is right in fixing 10% of contributory negligence on the part of the deceased and 90% on the part of the driver of the lorry?

9.Heard the learned counsel appearing on either side and perused the materials placed on record.

10.Admittedly, the deceased was working as Mason. He was aged about 46 years at the time of accident. Such view of the matter, the notional income fixed by the Tribunal is very low. Even minimum wages rule is applied, at the time of accident, the deceased would have earned more than Rs.12,000/- per month.

11.In such view of the matter, taking note of the fact that the deceased was a Mason by profession, the notional income of the deceased is fixed at Rs.12,000/- (Rupees Twelve Thousand only) per month. Considering the age of



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the deceased 25% (Rs.3,000/-) future prospects is added. Since there are four claimants, 1/4 deduction is applied. Accordingly, the monthly income of the deceased is fixed at Rs.11,250/- (Rupees Eleven Thousand Two Hundred and Fifty only). Considering the age of the deceased, multiplier 13 is adopted as per the dictum laid down by the Hon'ble Supreme Court in the case of ***Sarala Varma and Others vs. Delhi Transport Corporation and another*** reported in **2009 6 SCC page [2]**. Accordingly, the loss of income of the deceased is fixed at Rs.17,55,000/- (Rupees Seventeen Lakhs and Fifty Five Thousand only). Further, the compensation of Rs.7,000/- awarded by the Tribunal under head “10% increment of future prospects once in three years” is deleted, since already 25% of future prospects is awarded while arriving at loss of income.

12.The Tribunal had not awarded compensation towards loss of love and affection to the minor children of the deceased. Hence, this Court awards a sum of Rs.80,000/- (Rupees Eighty Thousand only) towards loss of love and affection to the minor children of the deceased. The compensation awarded under other heads remains unaltered.



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13.As far as the contributory negligence fixed on the part of the deceased is concerned, admittedly the deceased had not worn helmet at the time of accident. If the deceased wore helmet, the death would have been averted to some extent. Therefore, in order to fix some responsibility on the person, who rode the motorcycle without abiding the traffic rules, 10% contributory negligence is fixed on the part of the deceased. Considering the evidence available on record and the pleadings, the Tribunal had clearly concluded that only the driver of the offending lorry was rash and negligent in driving the vehicle. Therefore, 90% contributory negligence fixed on the part of the driver of the offending vehicle/lorry cannot be found fault. In the result, the claimants are entitled to the compensation as stated below:

S.No.	Description	Amount
1.	Loss of income	Rs.17,55,000/-
2.	Loss of consortium	Rs. 40,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Loss of estate	Rs. 15,000/-
5.	Loss of love and affection to the claimants 3 and 4	Rs. 80,000/-
	Total	Rs.19,05,000/-



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

15. The Insurance Company is directed to deposit the compensation amount as modified by this Court i.e., Rs.19,05,000/- (Rupees Nineteen Lakhs and Five Thousand only) with interest at the rate of 7.5% from the date of petition till the date of realization to the credit of M.C.O.P.No.1288 of 2019, on the file of the Motor Accident Claims Tribunal/Special District Court, Thanjavur within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited.

16. From the total compensation, the first claimant is entitled to a sum of Rs.9,05,000/- (Rupees Nine Lakhs and Five Thousand only), the claimants 2 to 5 are entitled to a sum of Rs.2,50,000/- each (Two Lakhs Fifty Thousand only). On deposit of the compensation amount by the Insurance Company, the major claimants are permitted to withdraw the amount as apportioned above, 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



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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.

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

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