



C.M.A.(MD)No.214 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated :13.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.214 of 2021

Shanmugam

... Appellant

Vs.

1.M/s.Solaimalai Properties [P] Ltd.,
Through its Managing Director,
No.7, Mangayarkarasi College Road,
Solaimalai Nagar, Paravai,
Madurai 625 402.

2.Relience General Insurance Company Ltd.,
Through its Branch Manager,
No.184/9B/7, V.V.D Main Road,
Near State Bank of India,
Tuticorin.

... Respondents

(R1 exparte before the Tribunal. Hence, notice dispenced with)

Prayer: This Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act, and under Section 100 of Civil Procedure Code, to enhance the award amount in M.C.O.P.No.112 of 2016 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court), Tirunelveli, dated 27.02.2019.



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For Appellant : Mr.T.Selvakumaran
For Respondents : Exparte- R1
: Mr.V.Sakthivel for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed seeking to enhance the compensation awarded by the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court), Tirunelveli in M.C.O.P.No.112 of 2016, dated 27.02.2019.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

A brief substance of the claim petition is as follows:

3. On 05.07.2016, the deceased/Kamatchi was travelling in a TATA ACE bearing registration No.TN-76-V-4299, at about 02.00 a.m. The driver parked the TATA ACE on the service road meant for Ayankulam in front of Mercy Angel International School on the outskirts of Tirunelveli. At that time, a lorry bearing Registration No.TN-59-AR-6573 belonging to the first respondent and insured with the second respondent came from north to



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south direction in a rash and negligent manner and entered into the service road on the extreme eastern side of Tirunelveli-Nagercoil four way road and dashed against the TATA ACE, as a result, deceased sustained injuries. Immediately, the deceased was taken to TVMC Hospital at Palayamkottai where she succumbed to her injuries on the same day.

4. At the time of accident, the deceased/Kamatchi was aged about 65 years and she was working as an agricultural coolie and was earning a sum of Rs.10,000/- per month. A case was also registered against the first respondent driver.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W. 2 were examined and Ex.P1 to Ex.P13 were marked. On the side of the respondents, no witness was examined and no documentary evidence was recorded.

6. The Tribunal on appreciation of entire evidence available had held that only the lorry driver was negligent in driving and awarded the compensation as hereunder:



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Sl.No	Heads	Amount
1.	Loss of Income (2250X12X5)	Rs.1,35,000/-
2.	Funeral Expenses	Rs.15,000/-
3.	Loss of Estate	Rs.15,000/-
4.	Loss of Consortium	Rs.40,000/-
Total		Rs.2,05,000/-

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

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

9. The Tribunal considering the evidence of P.W.1 and P.W.2 and the First Information Report filed, has proceeded with the entire evidence and came to the conclusion that the accident occurred only due to the negligent driving of the driver of the lorry. At the time of accident, the deceased/Kamatchi was aged about 65 years and was doing doing agricultural coolie and earning a sum of Rs.10.000/- as a monthly salary. However, with regard to the fixation of compensation, the Tribunal had fixed



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notional income at Rs.4,500/- and after deducting 50% towards her personal expenses, the Tribunal awarded a sum of Rs.2,250/- which is meagre.

10. This Court is of the considered view that the Tribunal ought to have considered the fact that the deceased was doing agricultural work and earning some considerable amount, there may be fluctuations in the agricultural income. This Court is of the view that the deceased should have earned reasonable amount and hence, a sum of Rs.6,000/- is taken as notional income in the interest of justice. Accordingly, this Court fixed the notional income of the deceased at Rs.3,000/-, after deducting 50% for her personal expenses. Therefore, the loss of income is calculated as follows:

$$\text{Rs.3000} \times 12 \times 5 = \text{Rs.1,80,000/-}$$

11. Accordingly, the compensation awarded by the Tribunal towards loss of income is hereby modified and enhanced from Rs.1,35,000/- to Rs.1,80,000/-. In all other aspects, the amount awarded by the Tribunal is hereby confirmed.



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12. The details of the modified award are as follows:

Sl.No	<i>Heads</i>	<i>Amount Rs.</i>
1.	Loss of Income	1,80,000/-
2.	Funeral Expenses	15,000/-
3.	Loss of Estate	15,000/-
4.	Loss of Consortium	40,000/-
<i>Total</i>		<i>2,50,000/-</i>

13. Accordingly, the total amount awarded by the Tribunal is enhanced from Rs.2,05,000/- to Rs.2,50,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit as compensation and costs.

14. The second respondent/Insurance Company is directed to deposit the compensation amount at the first instance as modified by this Court at Rs.2,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.112 of 2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Tirunelveli, within a period of four weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw the said amount, less



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the amount if any already withdrawn, by making necessary application before the Tribunal.

15. In the result, this Civil Miscellaneous Appeal stands allowed.

No costs.

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1/2

Index : Yes/No

Internet : Yes/No

Speaking Order/Non speaking Order

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N.SATHISH KUMAR, J.

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