



CMA(MD)No.1064 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

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1.Deivarani
2.Mior Kameswari
3.Minor Veluprabakaran
4.Kamachi
5.Karuppayee
(minors 2 and 3 rep. through
their mother of the 1st petitioner)

Appellants / Claimants

vs.

1.Senthilnathan
2.National Insurance Company Ltd.,
Madurai through its Branch Manager,
Office At 4th Floor, ADR Tower,
No.79, 74A, 7H-B, Theni Main Road,
P.P.Nagar, Kochadai,
Madurai.

Respondents

PRAYER:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree, dated 21.02.2018 in MCOP.No.1478 of 2016 on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Madurai.



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For Appellant : Mr. M.Mohan Gandhi

For 2nd respondent : Ms.P. Malini

JUDGMENT

This Civil Miscellaneous Appeal is filed against the Judgment and decree, dated 21.02.2018 made in MCOP.No.1478 of 2016 on the file of the Motor Accidents Claims Tribunal / IV Additional District Judge, Madurai.

2. The claimant is the appellant in the appeal. The appeal is filed seeking enhancement of compensation.

3. The summary of the facts necessary for the disposal of the case are that on 02.06.2016 at about 14.00 hours when the deceased Balamurugan was travelling as a passenger in the car bearing Regn.No.TN 59 BD 8215, the driver of the car drove the vehicle in a rash and negligent manner, due to which, he lost control over the vehicle and the vehicle capsized. The deceased Balamurugan sustained grievous injuries and ultimately he succumbed to the injuries on 18.06.2016. The deceased was



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39 years at the time of accident and was working as salesman in TASMAL and earning a sum of Rs. 10,000/- per month. The claimants filed a claim petition before the Tribunal claiming a sum of Rs.30,00,000/- towards compensation for the death of said Balamurugan in the motor accident. The first respondent was set ex parte in the Court below and so, the counter was filed by the 2nd respondent, insurer of the first respondent. The second respondent filed a detailed counter generally denying all the contentions raised in the claim petition. It was the case of the respondents that the negligence was that of the deceased and not that of the insurer's driver.

4. On the side of the petitioner, PW.1 and PW.2 were examined and four documents were marked as Exs.P1 to P4. On the side of the respondents RW.1 was examined and three documents were marked as Exs.R1 to R3.

5. The Tribunal on considering the entire evidence on record awarded a sum of Rs.12,04,000/- as compensation along with 7.5 % interest to be paid by the second respondent.



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6. The learned counsel appearing for the appellant / claimant submitted that the notional income assessed by the Tribunal at Rs.6,000/- per month for the accident which occurred in the year 2016 was very meagre. According to the counsel, the deceased was aged 39 years at the time of accident and he was working as a salesman in TASMAC and was maintaining a family of four members i.e., his wife, children and aged parents. The learned counsel therefore submitted that considering that the deceased was maintaining a family of five members, the notional income fixed at Rs.6,000/- per month was inadequate. Therefore, the learned counsel submitted that the compensation needed to be enhanced.

7. The learned counsel appearing for the second respondent / Insurance Company on the other hand submitted that in the absence of any documentary evidence as regards the income of the deceased, the Tribunal was justified in fixing the notional income at Rs.6,000/- per month. The counsel therefore prayed that the compensation awarded by the Tribunal had to be confirmed and the appeal dismissed.

8. It is an admitted fact that the deceased left behind his widow, two children and aged parents at the time of his death in the



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accident. That the deceased was maintaining a family of four members is not disputed. The claimants in the claim petition stated that the deceased was earning Rs.10,000/- per month. No doubt, there is no evidence to prove the income of the deceased but it is seen that the deceased was working as a salesman in TASMAL and his job was permanent in nature. Though the second respondent disputed that the deceased was permanently employed it is seen that on the death of the deceased, the widow was paid Rs.9,00,000/- by TASMAL which clearly shows that the deceased was employed with the TASMAL till his death in 2016. The fact that the widow was paid Rs.9,00,000/- by TASMAL was admitted by the respondent counsel before the Tribunal, I am of the view that the income claimed in the claim petition is just and reasonable. Therefore, the monthly income of the deceased is fixed at Rs.10,000/- per month. The Tribunal added 40% towards future prospectus, but in my view the claimants are entitled to 50% towards future prospectus as the deceased had a permanent job and was aged 39 years at the time of the accident. The Tribunal awarded a sum of Rs.40,000/- towards consortium to the widow of the deceased, but failed to award any amount to the other dependants towards consortium. As per the Judgment of the Hon'ble Supreme Court in **Pranay Sethi** case each of the dependants is entitled to



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Rs.40,000/- towards consortium. On the basis of the above discussion, I am of the view that the claimants are entitled to Rs.20,25,000/- towards loss of income.

(Monthly income Rs.15,000 /- x $\frac{1}{4}$ = Rs.3,750/-

Rs.15,000/- (-) Rs.3,750/- = Rs.11,250/- x 12 x 15

= Rs.20,25,000/-)

Further, the claimants are entitled to a sum of Rs.40,000/- each towards loss of consortium. In all other respects the amount awarded by the Tribunal is confirmed. Therefore, the Award of the Tribunal is modified as follows:

S. N	Particulars	Tribunal Award Amount	Enhanced amount	Total Award amount
1.	Loss of income	11,34,000	8,91,000	20,25,000
2.	Loss of Estate	15,000	Confirmed	15,000
3.	Funeral expenses	15,000	Confirmed	15,000
4.	Loss of consortium	40,000	1,60,000	2,00,000
	Total	12,04,000	10,51,000	22,55,000

9. Accordingly, the amount awarded by the Tribunal is enhanced from Rs.12,04,000/- to Rs.22,55,000/- together with interest at 7.5% per annum from the date of petition till date of deposit as compensation.



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10. The 2nd respondent / Insurance Company is directed to deposit the enhanced award amount of Rs.10,51,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit and costs to the credit of MCOP.No. 1478 of 2016, on the file of the Motor Accidents Claims Tribunal / IV Additional District Judge, Madurai, within a period of eight weeks from the date of receipt of copy this order. On such deposit, the appellants / claimants 1,3 and 5 are entitled to withdraw their shares as per the apportionment fixed by the Tribunal. The minor claimants share shall be deposited in a Nationalized Bank and the 1st appellant is permitted to withdraw the accrued quarterly interest. The appellants have restricted the appeal to Rs.6,00,000/- only. Therefore, a direction is given to the appellants to pay the difference of court fee for the enhanced amount.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

03.02.2023

Index : Yes/No
Internet : Yes/No
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The Motor Accidents Claims Tribunal, IV Additional District Judge,
Madurai.



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N. MALA, J.,

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