



C.M.A.(MD) No.862 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.862 of 2022

Kasthuri (Died)
Naganathan

... Appellant/ Petitioner

Vs.

1.Rakku
2.The Branch Manager,
M/s.National Insurance Company Limited,
No.3, G.M. Complex, II Floor,
North Veli Street, Madurai – 625 001.

... Respondents /
Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 17.06.2022 made in M.C.O.P.No.13 of 2016 on the file of the Motor Accident Claims Tribunal (Additional District Court, Paramakudi).

For Appellant : Mr.D.Senthil

For Respondents : Ms.P.Malini for R2



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JUDGMENT

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Challenging the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.13 of 2016, dated 17.06.2022 (Additional District Court, Paramakudi), the appellant has filed this Civil Miscellaneous Appeal.

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

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

The appellant is the brother of the deceased. The deceased was working as VAO and aged about 24 years. On 01.09.2013, while the deceased was proceeding in his motorcycle bearing Registration No.TN-65-F-8226 from east to west on the Rameshwaram – Madurai Highway, a lorry bearing Registration No.TML 8991, belonging to the first respondent, was driven by its driver in a rash and negligent manner and dashed against the deceased. As a result, the deceased succumbed to injuries. A case has also been registered in Crime No.250 of 2013 by Paramakudi Police Station, against the lorry driver. Hence, the petitioner along with his mother have filed the claim petition, claiming a sum of Rs.30,00,000/- as



compensation. During the pendency of the claim petition, the mother of the deceased died.

4. Before the Tribunal, the 2nd respondent - Insurance Company took a stand that the lorry was driven in a careful manner and disputed the negligence.

5. Before the Tribunal, on the side of petitioner, 4 witnesses were examined as P.W.1 to P.W.4 and 26 documents were marked as Ex.P1 to Ex.P.26. On the side of the respondents, one witness was examined as R.W.1 and two documents were marked as Ex.R1 to Ex.R2.

6. The tribunal, considering the fact that since the mother of the deceased died during the pendency of the appeal, the petitioner being the brother of the deceased, has awarded a sum of Rs.1,00,000/- as compensation towards loss of love and affection and a sum of Rs.15,000/- towards funeral expenses, totally awarded a sum of Rs.1,15,000/- as compensation. Challenging the same, the present appeal came to be filed.



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7. The learned counsel appearing for the petitioner submitted that in the absence of mother, the petitioner is the legal representative of the deceased. The trial Court has non-suited the petitioner on the ground that he is not dependent and he is not entitled to claim compensation, which is totally against the provisions of law and hence, prays for enhancement of compensation.

8. The learned counsel appearing for the 2nd respondent – Insurance Company has not disputed the award in legal aspects, however, submitted that since the deceased was a bachelor, the tribunal ought to have adopted the multiplier and also made the appropriate deduction.

9. In the light of the above submissions, the points arise for consideration in this appeal are as follows:

1. Whether the tribunal is correct in disallowing the major compensation and allowing only towards loss of love and affection?
2. Whether the petitioner is not entitled to claim any compensation?



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10. As far as the second point is concerned, this Court is of the view that an application for compensation can be filed by all or any of the legal representatives of the deceased as per Section 166 of the Motor Vehicles Act, 1988 and admittedly, the claim petition has been moved by the mother along with the petitioner and the petitioner's mother was died during the pendency of the claim petition. After her death, the petitioner is the only legal representative of the deceased, who is also second class legal heirs as per Hindu law. Therefore, the petitioner, being the legal representative of the deceased, is certainly entitled to claim compensation. Accordingly, the second point is answered.

11. Insofar as the first point is concerned, admittedly, the deceased was working as a VAO at the relevant point of time and he was drawing the salary of Rs.14,220/- per month. To substantiate the same, Ex.P22 has been field, besides Ex.P.21, service register of the deceased has also been field. Such view of the matter, this Court is of the view that the Tribunal ought to have granted compensation taking note of the monthly income of the deceased and also ought to have added 50% towards future prospects as per the dictum laid down by the Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi and others* reported in **2017 16 SCC 680**. Further, considering the fact that since



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the deceased was a bachelor, 50% ought to have deducted towards personal expenses. Hence, if a sum of Rs.14,220/- is taken as monthly income, after adding 50% towards future prospects, the monthly income would come at Rs.21,330/- and if 50% is deducted towards personal expenses, the monthly income would come at Rs.10,665/- and the annual income would come at Rs.1,27,980/-. If the multiplier '17' is applied, the loss of income would come at Rs.21,75,660/-. Further, this Court is awarded a sum of Rs.15,000/- towards loss of estate, a sum of Rs.15,000/- towards funeral expenses, a sum of Rs.5,000/- towards transportation and a sum of Rs.40,000/- towards loss of love and affection. Accordingly, the modified compensation is as follows:

S. No	Heads	Amount
1.	Loss of income	Rs.21,75,660/-
2.	Loss of Estate	Rs. 15,000/-
3.	Funeral expenses	Rs. 15,000/-
4.	Transportation	Rs. 5,000/-
5.	Loss of love and affection	Rs. 40,000/-
	Total	Rs.22,50,660/-

The petitioner is entitled to get a sum of Rs.22,50,660/- (Rupees Twenty Two Lakhs Fifty Thousand Six Hundred and Sixty only) as compensation along with interest at 7.5% p.a., from the date of petition till the date of deposit.



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14. In the result, this Civil Miscellaneous Appeal is allowed. The 2nd respondent – Insurance Company is directed to deposit the enhanced compensation amount of Rs.22,50,660/- (Rupees Twenty Two Lakhs Fifty Thousand Six Hundred and Sixty only)) along with interest at the rate of 7.5% p.a., less the amount, if any, already deposited, from the date of petition till the date of deposit, within a period of 12 weeks from the date of receipt of a copy of this order, if not deposited earlier. The petitioner may approach the Tribunal for withdrawal of the said amount, for filing necessary application and if such an application is filed, the Tribunal shall pass orders for withdrawal. The petitioner is directed to pay the additional Court fee for the enhanced amount. No costs.

24.03.2023

NCC : Yes/No
Index : Yes/No
vsm

To

- 1.The Additional District Court, Paramakudi.
- 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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