



C.M.A.(MD)No.339 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.339 of 2023

1.Maria Selvam
2.Mergina

... Appellants

Vs.

1.Mariappan

2.The National Insurance Company Limited,
represented by its Branch Manager,
No.37C, SN High Road,
Thirunagar,
Tirunelveli Junction,
Tirunelveli.

...Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of the compensation awarded in the judgment and decree dated 24.02.2022 made in M.C.O.P.No.488 of 2019 on the file of the Motor Accident Claims Tribunal (IV Additional District Court), Tirunelveli.

For Appellants : Mr.P.Samuel Gunasingh

For R1 : No appearance

For R2 : Mr.S.Srinivasa Raghavan



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JUDGMENT

The Civil Miscellaneous Appeal has been filed seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, IV Additional District Court, Tirunelveli in M.C.O.P.No.488 of 2019, dated 24.02.2022.

2. The Tribunal has awarded the compensation in the following manner:

S.No.	Description	Amount
1.	Loss of dependency	Rs.36,09,620/-
2.	Funeral expenses	Rs.25,000/-
3.	Loss of consortium	Rs.50,000/-
4.	Loss of estate	Rs.25,000/-
5.	Medical bills	Rs.69,251/-
	Total	Rs.37,78,871/-

3. The brief facts leading to the filing of this appeal are as follows:

The deceased was a Special Sub Inspector of Police and on 11.01.2019 at about 6.30 p.m., while he was travelling in a motorcycle



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bearing Registration No.TN 74 AB 2180, the motorcycle bearing Registration No.TN 69 AS 8941 was driven from the opposite direction in a rash and negligent manner and dashed against the deceased. As a result, he was sustained injuries and died on 14.01.2019. The deceased was aged about 53 years and his legal heirs have filed the claim petition before the Tribunal seeking compensation.

4. Before the Tribunal, it is the contention of the Insurance Company that the deceased did not have a valid driving licence, the vehicle was never insured and he did not wear helmet and the age and income of the deceased also denied.

5. On the side of the petitioners, P.Ws.1 to 4 were examined and Exs.P1 to P17 were marked and on the side of the respondents, R.W.1 was examined and no document was marked and Exs.X1 to X4 were marked.

6. The Tribunal, considering the evidence of the eyewitnesses and the F.I.R registered against the rider of the offending vehicle, found



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that only the rider of the offending vehicle rode the motorcycle in a rash and negligent manner and dashed against the deceased. The negligent aspect has not been disputed and no appeal whatsoever filed by the Insurance Company. Despite the salary certificate produced, the Tribunal took the monthly income as Rs.44,035/- and awarded a sum of Rs. 37,78,871/- as compensation. Challenging the same, the present appeal came to be filed by the claimants.

7. It is the contention of the learned counsel for the appellants that the salary certificate itself clearly established the fact that the deceased was drawing a salary of Rs.58,945/- at the time of death, whereas the Tribunal has taken only Rs.44,035/-, which is not correct and the Tribunal ought to have taken the original salary drawn by the deceased.

8. On verification of the salary certificate, the learned counsel appearing for the second respondent would submit that the deceased actually drawn a sum of Rs.58,945/- before his death, whereas the salary certificate has been given by dividing the salary from 01.01.2019 to



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13.01.2019 and the Tribunal has taken the lesser amount. According to the learned counsel, the original salary drawn by the deceased was only Rs.58,945/-.

9. In such a view of the matter, now the point for consideration in this appeal is whether the Tribunal is right in calculating the salary of Rs.44,035/-.

10. The only issue is with regard to fixing the salary of the deceased. The salary certificate has been marked as Ex.P12. On perusal of the above salary certificate, the last drawn salary from 01.12.2018 to 31.12.2018 is Rs.58,945/-, whereas the salary certificate also given particulars about the salary drawn till his death for the period of 14 days divided and shown as lesser amount. Thereafter, after deducting that amount, the amount of Rs.44,035/- shown as a salary, but his actual salary was Rs.58,945/-. The Tribunal has not considered this aspect and simply adopted the lesser amount shown in the other column.

11. In such a view of the matter, this Court has fixed the



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monthly income of the deceased at Rs.58,945/- and added 15% towards future prospects (Rs.58,945/- + Rs.8,842/- = Rs.67,787/-) and deducted 10% towards income tax (Rs.67,787/- - Rs.6,779/- = Rs.61,008/-) and after deducting 1/3rd towards personal expenses, the loss of income comes to Rs.40,672/- (Rs.61,008/- - Rs.20,336/-). Thus, the total loss of income comes to Rs.53,68,704/- (Rs.40,672/- x 11 x 12). In respect of deduction made with regard to non-wearing of helmet, this Court is of the view that the same has to be confirmed. Since the police personnel himself has violated the rules, some amount has to be deducted ie., 10%. Further, this Court awarded a sum of Rs.40,000/- towards loss of consortium, a sum of Rs.40,000/- awarded towards loss of love and affection to the second petitioner, a sum of Rs.15,000/- towards loss of estate, a sum of Rs.25,000/- towards funeral expenses and the amount of Rs.69,251/- awarded under the head of Medical bills is confirmed.

12. The compensation awarded by the Tribunal is enhanced as



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follows:

S.No.	Description	Amount
1.	Loss of dependency	Rs.53,68,704/-
2.	Funeral expenses	Rs.25,000/-
3.	Loss of consortium to the first petitioner	Rs.40,000/-
4.	Loss of love and affection to the second petitioner	Rs.40,000/-
4.	Loss of estate	Rs.15,000/-
5.	Medical bills	Rs.69,251/-
	Total	Rs.55,57,955/-

After deducting 10% towards non-wearing of helmet by the deceased, the total compensation payable to the appellants comes to Rs. 50,02,159/-, rounded off to Rs.50,02,200/-.

13. In the result, the Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first appellant is permitted to withdraw a sum of Rs. 35,00,000/- and the second appellant is permitted to withdraw the remaining amount of Rs.15,02,200/- with accrued interest and cost. No



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costs.

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To

- 1.The Motor Accident Claims Tribunal
(IV Additional District Court),
Tirunelveli.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR,J.



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