



C.M.A. (MD)No.148 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.148 of 2022

1.Rathinam
2.Anand
3.Ramkumar
4.Ramya

...Appellant/ petitioners

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore.

2.ICICI Lombard General Insurance Company Ltd.,
through its Branch Manager,
NO.414, Sarkar Mark,
Near Mumbai Sithivinayakar Kovil,
Prabhadies, Maharastra – 400 025.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree, dated 22.06.2018 passed in MCOP.No.63 of 2016, on the file of the Motor Accidents Claims Tribunal / Additional District and Sessions Judge, Theni at Periyakulam.



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For Appellant : Mr. D. Balasubramanian

For 1st respondent : Mr.P. Prabhakaran

For 2nd respondent : Mr. P. Pethu Rajesh

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Award, dated 22.06.2018 made in MCOP.No.63 of 2016, on the file of the Motor Accidents Claims Tribunal / Additional District and Sessions Judge, Theni at Periyakulam seeking enhancement of compensation.

2. The case of the appellants / claimants before the Tribunal is that the first appellant is the wife of the deceased Navaneethan; 2nd and 3rd respondents are sons and the 4th respondent is the daughter of the deceased. The deceased Navaneethan was an agriculturist and earning a sum of Rs.3,00,000/- per month. While he was driving his motorcycle on 21.05.2015 at about 9.30 p.m., near the Annaji Vilakku Bypass road, the first respondent's Corporation driver drove the bus bearing Regn. TN 38 N 2389 in a rash and negligent manner and caused accident head on collusion as well as the deceased succumbed to injuries. Hence, the legal



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heirs of the deceased filed a claim petition before the Tribunal and the Tribunal has awarded a sum of Rs.8,40,000/- as compensation. Challenging the same, this appeal has been filed by the claimants on the ground that despite Exs.P6 to P12 filed to show the agricultural income, the Tribunal has failed to consider the same and fixed the compensation only on the basis of the notional income.

3. It is the case of the first respondent / Transport Corporation that the deceased did not possess a valid driving licence at the time of accident and he was negligent in driving motorcycle. Despite, the bus which was coming in the opposite direction in a higher speed overtaking the motorcycle, has dashed the deceased and caused the accident and they have also denied the income of the deceased.

4. The second respondent insurer of the motorcycle took a stand that since the policy does not cover, the owner of the vehicle cannot be made liable to pay the compensation.

5. Before the Tribunal, on the side of the appellants, PW.1 to PW.3 were examined and Exs.P1 to P13 were marked. On the side of the



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respondents RW.1 was examined and Exs.R1 and R2 were marked.

6. On oral appreciation of evidence, the Tribunal found that the accident was caused only due to the negligent Act of the driver of the Transport Corporation, respondent herein. However, the Tribunal has fixed the notional income of the deceased at Rs.7,000/- per month and deducted 1/3rd towards personal expenses and finally awarded the following compensation with interest at the rate of 7.5% per annum:

S.No	Heads	Amount
1.	Loss of income	Rs.6,60,400/-
2.	Loss of marital life	Rs. 50,000/-
3.	Loss of love and affection	Rs. 1,00,000/-
4.	Transportation	Rs. 15,000/-
5.	Funeral expenses	Rs. 15,000/-
	Total	Rs.8,40,000/-

7. The learned counsel appearing for the appellants submitted that the appellants / claimants have filed the documents to show that the deceased was cultivating in 2 Hectares and 18 Ares. He further contended that Exs.P6 to P12 clearly established the fact that the deceased supplied



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the Tomatoes to the Commission Mandi for a sum of Rs.8,50,000/- prior to the death and this fact has not been considered by the Tribunal. Besides PW.3 was also examined in this regard. Hence, he submits that the compensation fixed by the Tribunal is not in according to law.

8. Whereas the counsel for 1st respondent / Corporation has submitted that though the Exs.P6 to P12 filed, the cross examination of PW.3 clearly stated that the deceased never supplied any Tomatoes for his shop for the past 20 years and hence, there is no loss of income. He further contended that the other members of the family can continue the cultivation in the agricultural land. Hence, he prayed for dismissal of this appeal.

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

10. The Tribunal considering the evidence of PW.1 and PW.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 Corporation. It is relevant to note



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that it is head on collusion and if the bus driven by its driver in a safe manner the accident could have been avoided. It has not been done so. As the Tribunal appreciated all the evidence and came to the conclusion that the driver of the bus was only negligent. However, with regard to the fixation of compensation, the Tribunal has adopted notional income at Rs. 7,000/- per month. It is relevant to note that the documents have been filed before the Tribunal Ex.P3 shows that the deceased was having cultivating land to the extent of 2 Hectares and 18 ares and that apart Ex.P4 also filed to show that an another extent of 1 Hectares 84 Acres has also been in the name of the first appellant and also the deceased is the elder son of the family and he is only taking care of the cultivating lands. Further, Exs.P6 to P12 filed to show that periodical agricultural products like Tomatoes supplied to Commission Mandi, but, PW.3 in his cross examination has not supported the case of the appellants stating that the deceased never supplied Tomatoes to his shop for the past 20 years. Considering the above, the Tribunal did not rely upon those documents and fixed notional income at Rs.7,000/- per month.

11. This Court is of the view that the notional income adopted by the Tribunal is not on any basis. The Tribunal ought to have considered



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the fact that the deceased has cultivated in much extent of land and earning some considerable amount, so there may be fluctuations in the agricultural income, the Tribunal ought not to have adopted lesser amount as notional income. As the bills failed to prove the income of the deceased, considering the family members of the deceased and also considering the extent of cultivating agricultural land, this Court is of the view that the deceased should have earned reasonable amount and hence, a sum of Rs. 15,000/- will be taken into consideration as notional income in the interest of justice. Accordingly, this Court fixed the notional income of the deceased at Rs.15,000/- per month. Admittedly, the deceased was 55 years as per the postmortem certificate. As per the Judgment of the Hon'ble supreme Court reported in **2017(2) TNMAC 609(SC) (National Insurance Company Limited Vs. Pranay Sethi and others)** and considering the age of the deceased i.e., 55 years, 10% of the income ought to have been added towards future prospectus in the income of the deceased. Further, 1/4th to be deducted towards personal expenses, considering the number of four dependants and the correct multiplier applicable for in the present case is 11. Therefore, the loss of income is calculated as follows:

$$\text{Rs.15,000/-} \times 10\% = \text{Rs.15,000/-} + \text{Rs.1,500/-}$$



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$$= \text{Rs.}16,500/- \times \frac{1}{4} = \text{Rs.}4,125/-$$

$$= \text{Rs.}16,500/- (-) \text{Rs.}4,125/-$$

$$= \text{Rs.}12,375 \times 11 \times 12$$

$$= \text{Rs.}16,33,500/-$$

12. Accordingly, the compensation awarded by the Tribunal towards loss of income is hereby modified and enhanced from Rs.6,60,000/- to Rs.16,33,500/-. In all other aspects, the amount awarded by the Tribunal is hereby confirmed.

13. The details of modified amount as follows:

S.No	Heads	Amount Rs.
1.	Loss of income	16,33,500
2.	Loss of marital life	50,000
3.	Loss of love and affection	1,00,000
4.	Transportation	15,000
5	Funeral expenses	15,000
	Total	18,13,500

14. Accordingly, the amount awarded by the Tribunal is



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enhanced from Rs.8,40,000/- to Rs.18,13,500/- together with interest at 7.5% per annum from the date of petition till date of deposit as compensation and costs.

15. The 1st respondent / Transport Corporation is directed to deposit the entire award amount of Rs.18,13,500/- 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. 63 of 2016, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Theni at Periyakulam, after deducting the amount already deposited if any, within a period of three months from the date of receipt of copy this order. On such deposit, the 1st appellant is permitted to withdraw a sum of Rs.9,13,500/- together with accrued interest at 7.5% per annum and the appellants 2 to 4 / claimants are permitted to withdraw a sum of Rs.3,00,000/- each along with accrued interest at 7.5% per annum on filing necessary application before the Tribunal.

16. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

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Index : Yes/No



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Internet : Yes/No

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To

1. The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge, Theni at Periyakulam.
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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