



C.M.A.(MD)No.1054 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

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- 1.Yasmin
- 2.Minor Mohammed Riyas
- 3.Minor Sanofar
- 4.Malligabeevi
- 5.Shahul Hameed

...Appellants/claimants

Vs.

- 1.Subramani
- 2.The Divisional Manager,
M/s.United India Insurance Company Ltd.,
No.1, Prominate Road,
Contonment,
Trichirappalli District.

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to modify the judgment and decree dated 23.03.2022 passed in M.C.O.P.No.1040 of 2014 on the file of the Motor Accident Claims Tribunal/Special District Court, Trichirappalli and award further enhancement of compensation of Rs.3,88,100/-.

For Appellants	: Mr.N.Sudhagar Nagaraj
For R2	: Mr.A.S.Mathialagan
For R1	: No Appearance



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JUDGMENT

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This Civil Miscellaneous Appeal is filed challenging the award passed by the Motor Accident Claims Tribunal/ Special District Court, Trichirappalli in M.C.O.P.No.1040 of 2014, dated 23.03.2022.

2.The brief facts, leading to the filing of the claim petition, are as follows:-

(i)for the sake of convenience, the parties herein are referred to as per their rank before the Tribunal.

(ii)On 30.05.2010 at about 04.00 a.m., the deceased was riding his two wheeler bearing Registration No.TN-45-AJ-8672 having one Siddhik as pillion rider in Kallani to Trichy main road. When he reached Kokkuparai Kamatchi Amman Temple, the driver of the first respondent's TATA 407 van bearing Registration No.TN-49-F-2297 had driven the vehicle in a rash and negligent manner and dashed against the two wheeler of the deceased. As a result, the deceased sustained serious injuries and succumbed to injuries on 06.06.2010.

(iii)the first petitioner is the wife of the deceased. The second and third petitioners are the children of the deceased. The fourth and fifth petitioners are the



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parents of the deceased. The deceased was aged about 29 years at the relevant point of time. He was earning a sum of Rs.6,000/- per month as Driver. Due to the sudden demise of the deceased, the family lost the financial support of the deceased. Hence, the claim petition was filed seeking compensation.

(iv) the second respondent/Insurance company resisted the claim petition stating that the accident had happened due to the rash and negligent riding of the two wheeler rider. The driver of the first respondent has no valid driving license at the time of the accident. Further, the vehicle was sold to one Kaliyamoorthy.

3.Before the tribunal, on the side of the claimants P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P9 were marked. On the side of the respondents R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R4 were marked and Ex.X1 was also marked.

4.The tribunal based on the entire oral and documentary evidence on record fixed the negligence on the part of the first respondent and awarded the compensation of Rs.12,11,900/-. The present appeal had been filed by the claimants seeking enhancement of compensation.



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5.The learned counsel for the appellants/claimants submitted that the deceased was a Driver by profession and he was earning a sum of Rs.6,000/- per month. His driving license was marked as Ex.P4. Though the deceased was a qualified Driver, the Tribunal had adopted the notional income of the deceased only at Rs.4,500/-, which is very meager and the same has to be enhanced.

6.The learned counsel for the second respondent submits that there are no other materials except the driving license of the deceased, to support the contention of the appellants that the deceased was earning a sum of Rs.6,000/- per month and the Tribunal had properly fixed the notional income of the deceased at Rs.4,500/ and same does not warrant any interference.

7.I have heard the learned counsel appearing on either side and also perused the materials available on record.

8.It is true that except the driving license of the deceased, there is no other evidence to show that the deceased was a Driver by profession and he was earning a sum of Rs.6,000/- per month as claimed in the claim petition. The learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme



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Court in the case of ***Syed Sadiq vs. United India Insurance Co.Ltd.***, [2014(1) TN

MAC 459] for the proposition that in an unauthorized sector, it is too difficult to prove the income. For a vegetable vendor, the Hon'ble Supreme Court had adopted a sum of Rs.6,500/- towards notional income. The learned counsel for the appellants also seeks to adopt the same for fixing the notional income of the deceased.

9.The learned counsel for the first respondent submitted that even in the claim petition, the appellants have claimed only a sum of Rs.6,000/- as monthly income of the deceased and the appellants now cannot seek more than the amount claimed in the claim petition.

10.This Court is of the view that whatever amount is claimed by the claimants, it is for this Court to find out what is just and reasonable compensation. In the present case, the deceased was a Driver and he is having a valid driving license. Hence, this Court is of the view that the income fixed by the Tribunal is very low. In *Syed Sadiq's* (cited supra) case, the Hon'ble Supreme Court in a case of vegetable vendor, has fixed a sum of Rs.6,500/- as notional income. Hence, the Tribunal ought to have fixed a sum of Rs.6,500/- as the monthly income of the



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deceased to award a reasonable compensation.

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11. Accordingly, this Court fixes the monthly notional income of the deceased at Rs.6,500/- (Rupees Six Thousand Five Hundred only). If 40% of future prospects is added as per the dictum laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd., vs. Pranay Sethi and others* [CDJ 2017 SCC 1220], the monthly income of the deceased would come around Rs.9,100/- (Rupees Nine Thousand Hundred only). Since there are five claimants 1/4 of his income is deducted towards his personal expenses. Hence, the monthly income of the deceased is fixed at Rs.6,825/- (Rupees Six Thousand Eight Hundred and Twenty Five only) and considering the age of the deceased at the relevant point of time, multiplier 17 is added. Hence, the compensation under the head loss of dependency would come around Rs.13,92,300/- (Rupees Thirteen Lakhs Ninety Two Thousand and Three Hundred only).

12. Accordingly, the loss of income awarded by the Tribunal is enhanced to Rs.13,92,300/- from Rs.9,63,900/-. Except this, the compensation awarded under other heads by the Tribunal remains unaltered. In fine, the claimants are entitled to the compensation as stated below:

S.No.	Head	Amount
1.	Loss of dependency	Rs.13,92,300/-
2.	Transportation charges	Rs. 7,000/-



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3.	Medical expenses	Rs. 46,000/-
4.	Loss of estate	Rs. 10,000/-
5.	Loss of consortium	Rs. 35,000/-
6.	Loss of parental consortium	Rs. 70,000/-
7.	Loss of Filial consortium	Rs. 70,000/-
8.	Funeral Expenses	Rs. 10,000/-
	Total	Rs.16,40,300/-

13.From the enhanced compensation, the first claimant is entitled for a sum of Rs.6,40,300/- (Rupees Six Lakhs Forty Thousand and Three Hundred only), the second and third claimants are entitled to a sum of Rs.4,00,000/- each (Rupees Four Lakhs only) and the fourth and fifth claimants are entitled to a sum of Rs.1,00,000/- each (Rupees One Lakh each).

14.In view of the above, this Civil Miscellaneous Appeal is allowed. The second respondent / Insurance Company is directed to deposit the entire compensation amount as modified by this Court, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the major claimants shall withdraw their respective share by filing necessary application before the Tribunal.



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15.The second appellant/claimant, who was aged about 6 at the time of filing of the claim petition, would have attained the age of majority by this time.

Hence, the second appellant/claimant is also entitled to withdraw his share by showing the proof of attaining the age of majority before the Tribunal. The Tribunal shall deposit the share of the minor claimant/third appellant in a Fixed Deposit in any one of the Nationalized Banks, till she attains majority. The guardian of the minor claimant is permitted to withdraw the interest accrued thereon once in three months directly from the bank. The order of the Tribunal as regards interest as well as pay and recovery remains unaltered. No costs. Additional Court fee, if any, shall be paid.

15.12.2023

NCC : Yes / No

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accident Claims Tribunal
Special District Court, Trichirappalli.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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