



WEB COPY



1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.1134 OF 2023

1.Kiruthika

2.Minor Devadharshan

(Minor second appellant represented through his mother and natural guardian, the first appellant herein Kiruthika)

3.Matheswari

4.Muniamma :Appellants/Petitioners

.VS.

1.M/s.SRS Roadways,
Kasikadu,
Morasapatti Post,
Edapadi Taluk,
Salem – 637 101.

2.The New India Assurance Company Limited,
Branch Office,
Jerom Building Second Floor,
Kottai Station Road,
Tiruchirappalli.

Policy No.71050031160150011950 : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.1524 of 2017, dated 12.04.2022, on the file of the Motor Accidents Claims Tribunal(Special District Court),



Tiruchirappalli seeking further enhancement of compensation of Rs. 15 lakhs.

For Appellants :Mr.N.Sudhagar Nagaraj

For Respondent-2 :Mr.A.Ilango

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellants/Claimants challenging the quantum of compensation awarded in M.C.O.P.No.1524 of 2017, dated 12.04.2022, on the file of the Motor Accidents Claims Tribunal(Special District Court), Tiruchirappalli seeking enhancement of compensation at Rs.15 lakhs.

2.The appellants filed the claim petition under Section 140 and 166 of the Motor Vehicles Act stating that on 24.08.2017 at about 19.15 p.m., in Bhavani-Mettur Main Road, near Chinnapallam Bus stop, Ammapettai, the deceased was riding the two wheeler bearing Registration No. TN 93 0768 following the road traffic rules from south to north on the left side of the road.

3.At that point of time, the lorry bearing Registration No. TN 52 K 9214 belong to the first respondent, insured with the second respondent, had come in a rash and negligent manner from the



opposite direction and dashed against the two wheeler of the deceased. As a result, the deceased sustained multiple injuries all over the body and died on the spot. The deceased was working as a Welder and earning a sum of Rs.18,000/-p.m. He is the sole breadwinner of the family. Because of his sudden demise, the appellants/claimants are left in lurch and they find the living very difficult. They lost both financial and moral support of the deceased and hence a petition was filed claiming a compensation of Rs.50 lakhs.

4.In the counter filed by the second respondent, it was stated that the vehicle of the first respondent involved in the accident has not been insured and it had no valid RC and FC permit.The claim of compensation at Rs.50 lakhs is very excessive.

5.During the enquiry before the Tribunal, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P15 were marked. To prove the employment and monthly earning of the deceased, Ex.X1 to Ex.X3 were produced and marked. On the side of the respondents, no witness was examined and no documents were marked. On considering the oral and documentary evidence, the learned Tribunal awarded a sum of Rs.14,76,000/- as compensation under various



heads which are as follows:

1.Loss of Dependency	- Rs.13,44,000/-
2.Transport expenses to the hospital	- Rs.7,000/-
3.Loss of Estate	-Rs.10,000/-
4.Loss of consortium the first petitioner	-Rs.35,000/-
5.Parental consortium to to the second petitioner	-Rs.35,000/-
6.Filial consortium to the third petitioner	- Rs.35,000/-
7.For funeral expenses total	-Rs.10,000 ----- -Rs.14,76,000/- -----

6.This award is being challenged by the learned counsel for the appellants on the ground that despite production of Ex.X1 to Ex.X3 documents and examination of P.W.3 in proof of the avocation of the deceased as a Welder and earning Rs.18,000/- p.m., the Tribunal without any sustainable reason, rejected the evidence of P.W.3 and Ex.X1 to Ex.X3 and had taken the notional income at Rs.7,500/-p.m.This is not on the basis of evidence and thus this appeal is filed.

7.In reply to the above submission, the learned counsel for the second respondent submitted that no doubt that P.W.3 had produced Ex.X1 to Ex.X3 and gave evidence that the deceased had



worked as a Welder and was paid Rs.18,000/- as monthly salary.

The Tribunal rejected his evidence for the reason that except his oral evidence, there is no other evidence produced like the Attendance Register and Wage Register to corroborate and confirm that the deceased was employed as a Welder and earned Rs. 18,000/-p.m. Thus he submitted that the income fixed at Rs.7500/-p.m is just and appropriate.

8. In reply, the learned counsel for the appellants submitted that even in the absence of evidence of P.W.3 and Ex.X1 to Ex.X3 and on the premise that the deceased was not working as Welder, he submitted that considering the age of the deceased that he was only 31 years at the time of accident, he would have earned not less than Rs.10,000/-p.m by doing any physical labour. It is his further case that adopting notional income at Rs.7500/-p.m is very low.

9. This Court considered the rival submissions made on either side and perused the records.

10. As discussed above, this appeal is filed by the appellants/claimants challenging the quantum awarded and for enhancement of the quantum of compensation awarded. The only



question that has to be decided in this appeal is whether the learned Tribunal was right in adopting the notional income at Rs. 7500/-p.m or it requires to be enhanced?

11. Admittedly, the evidence of P.W.3 and Ex.X1 to Ex.X3 were rejected for the reason that this evidence is not supported by the Attendance Register and Wage Register. This Court also finds that no Technical Certificate issued by IIT or any other qualified institution for the completion of Course in Welder by the deceased was produced. Therefore, this Court also finds that rejection of evidence of P.W.3 and Ex.X1 to Ex.X3 is correct.

12. However, this Court finds some merit in the submission of the learned counsel for the appellants that considering the age of the deceased that he was only 31 years at the time of accident, he would have earned not less than Rs.10,000/-p.m by doing any physical labour. Therefore, this Court is of the view that fixing the notional income at Rs.7,500/-p.m is required to be set aside and the notional income is enhanced to Rs.10,000/-p.m. Along with this amount, 40% of the notional income has to be added towards future prospects and thus the monthly income is fixed as Rs. 14,000/-(Rs.10,000/- + Rs.4,000/-). As per **Sarla Verma's case**(



Smt.Sarla Verma .vs. Delhi Transport Corporation and another reported in 2009(2) TN MAC 1(SC), one fourth of the

monthly income has to be deducted towards the personal expenditure of the deceased. $1/4^{\text{th}}$ amount is Rs.3,500/- and thus $3/4^{\text{th}}$ amount comes to Rs.10,500/-. Appropriate multiplier to be adopted for computation of loss of income is '16'. Thus the loss of income is $\text{Rs.}10,500 \times 12 \times 16 = \text{Rs.}20,16,000/-$. The compensation awarded under other heads are retained. Thus the award of the Tribunal is modified as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of income	Rs. 13,44,000/-	Rs. 20,16,000/-	enhanced
2	Transport expenses to the hospital	Rs.7,000/-	Rs.7,000/-	same
3	For loss of estate	Rs.10,000/-	Rs.10,000/-	same
4	For funeral expenses	Rs.10,000/-	Rs.10,000/-	Same
5.	For loss of filial consortium to the first petitioner wife	Rs.35,000/-	Rs.35,000/-	same
6	For loss of consortium to the second petitioner	Rs.35,000/-	Rs.35,000/-	Same
7	For filial consortium to the third petitioner	Rs.35,000/-	Rs.35,000/-	Same
8	Total	Rs. 14,76,000/-	Rs. 21,58,000/-	enhanced



13. In fine, the Civil Miscellaneous Appeal is allowed in part and the award amount is enhanced from Rs.14,76,000/- to Rs. 21,58,000/- with interest at 7.5% p.a from the date of claim petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the above said enhanced award amount with accrued interest and costs, less the award 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 first claimant is entitled to a sum of Rs. 10,58,000/- and the second claimant is entitled to a sum of Rs.8 lakhs and third claimant is entitled to a sum of Rs.3 lakhs with proportionate accrued interest and costs. The claimants/appellants 1 and 3 are permitted to withdraw the above said award amount, less the award amount if any already withdrawn, by filing necessary application before the Tribunal. The second claimant/second appellant, being minor, Tribunal is directed to deposit the share of the second claimant in any one of the nationalised Bank, in an interest bearing fixed deposit, initially for a period of three years, renewable thereafter, till he attains majority. The first claimant/first appellant, being mother and natural guardian of the second claimant, is permitted to withdraw interest from the above said deposit, once in three months, directly from the Bank and utilize the



same for the welfare of the child/minor second appellant. This appeal is dismissed in respect of the fourth claimant as per the findings of the Tribunal. Registry is directed to draft the decree in this appeal only after payment of excess court fee, if any, towards the enhanced award amount, before the Registry. No costs.

09.11.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Motor Accidents Claims Tribunal,
Special District Court,
Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



10

G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)No.1134 of 2023**

09.11.2023