



C.M.A.(MD)No.487 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.487 of 2023

1.C.Mookayi
2.M.Chellan

...Appellants/Petitioners

Vs.

1.P.Madhusudhanan
2.M/s.Reliance General Insurance Co., Ltd.,
Through its Divisional Manager,
Divisional Office, Meenakshi Plaza 1st Floor,
80 Feet Road, Anna Nagar,
Madurai-625 020.

...1&2Respondents/1&2Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decree order dated 10.06.2022 passed in M.C.O.P.No611 of 2017 by the Motor Accidents Claims Tribunal, Special District Court/MACT, Madurai.

For Appellant : Mr.S.Vijayashanthi

For R2 : Mr.V.Sakthivel



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JUDGMENT

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The above appeal has been filed by the appellants/claimants for enhancement of compensation. The claimants are the parents of the deceased.

2.Mr.V.Sakthivel, who takes notice for the second respondent, has also agreed to dispose of the appeal at the time of admission itself. By consent of both sides, the appeal is taken up for disposal.

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

The deceased viz., Chandran, who was aged about 25 years at the time of accident. On 30.05.2017, while the deceased was travelling as a pillion rider on a motorcycle bearing Registration No.TN-58-AC-6465 driven by one Muthiah from East to West, the first respondent's lorry bearing Registration No.TN-58-X-5342 driven by its driver from East to West and dashed against the motorcycle from behind and due to the impact, the deceased and the rider of the two wheeler died on the spot. The deceased was working as labour in a water plant and earning Rs.15,000/- per month. Hence, the parents filed claim petition claiming Rs.30,00,000/-



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4.It is the contention of the learned counsel for the second respondent that the rider of the two wheeler drove the vehicle in a rash and negligent manner, which resulted in the accident. The other aspects are not in dispute.

5.On the side of the petitioners, P.W.1 to P.W.3 were examined and Ex.P. 1 to Ex.P.22 were marked. On the side of the respondents, no witness was examined and no document was marked.

6.The Tribunal, after considering the evidence of P.W.1 and P.W.2, fixed 15% of contributory negligence on the part of the rider of the motorcycle and 85 % of contributory negligence on the part of the offending lorry .

7.It is the contention of the learned counsel for the appellant that the notional income fixed by the Tribunal is very meagre and even if the minimum wages is applied, the notional income would come around more than Rs.12,000/-. Hence, he seeks to enhance the compensation.

8.The learned counsel appearing for the second respondent/Insurance Company fairly submitted that even the cost index is applied, the income will be



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more. Considering the above, now the point that arose for consideration before this Court that whether the Tribunal is right in fixing the notional income at Rs. 9,000/-?

9. Admittedly, the deceased is a bachelor and taking note of the fact that the deceased was only aged about 25 years at the time of accident and even if minimum wages is applied, the income would be more. But, the Tribunal fixed the monthly income of the deceased as Rs.7,000/-. Even the cost index is adopted, the income will be Rs.13,000/-. In such view of the matter, this Court is inclined to fix the notional income of the deceased as Rs.12,000/- per month and add 40% towards future prospects, the notional income would come around Rs.4,800/- ($12,000 \times 40 / 100 = 4,800$) and the total income is Rs.16,800/- ($12,000/- + 4,800/-$). Considering the fact that the deceased is a bachelor, 50% of the income is deducted towards his personal expenses ($16,800/- \times 50 / 100 = 8,400/-$). The total income of the deceased is Rs.18,14,400/- ($8,400/- \times 12 \times 18$). In other aspect, the award of the Tribunal is confirmed. Totally, the claimant is entitled to the compensation as Rs.19,29,400/-



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10.In fine, this Civil Miscellaneous Appeal is allowed and the award passed by the Motor Accidents Claims Tribunal/Special District Court, Madurai in M.C.O.P.No.611 of 2017, dated 10.06.2022, is hereby modified. After deducting 15% towards contributory negligence on the part of the deceased, the compensation would come around Rs.16,39,990/- (19,29,400/- x 15/100).

11.The second respondent/Insurance Company is directed to deposit the compensation amount as modified by this Court with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization, within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the appellants/claimants are entitled to withdraw a sum of Rs.8,19,995/- each, less the amount any already withdrawn, as apportioned by the Tribunal, by making necessary application before the Tribunal. No costs.

02.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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N.SATHISH KUMAR, J.

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To

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

**C.M.A.(MD)No.487 of 2023
and
C.M.P(MD)No.4759 of 2023**

02.06.2023