



C.M.A.(MD)No.184 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 09.02.2023

Delivered On : 23.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.184 of 2020

1. Ramayee
2. R.Mookkayee
3. P.Anjalai
4. Minor.P.Elanjiyam
5. Minor.P.Venkatesan

(Minor appellants 4&5 rep. through their
natural guardian and mother, the
first appellant herein)

... Appellants /claimants

Vs.

- 1.A.Jayaraj
- 2.M/s.Reliance General Insurance Co. Ltd.,
No.15-A, PLA Kanagu Towers,
Thillainagar, 11th Cross, Trichy – 18.
(Policy No.120471231100013393)

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree order passed by the Motor Accident Claims Tribunal – Sub Court, Kulithalai, in M.C.O.P.No.270 of 2014, dated 27.08.2018.



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For Appellants	: Mr.N.Sudhagar Nagaraj
For Respondents	: Mr.P.Santhoshkumar for R1
	: Mr.V.Sakthivel for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed by the Motor Accident Claims Tribunal – Sub Court, Kulithalai, in M.C.O.P.No.270 of 2014, dated 27.08.2018. The appellants herein are the claimants and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.270 of 2014, is as follows:-

On 04.07.2011, at about 6.00 pm., when the deceased – Pappan was riding his cycle along the left side mud road, an Indica Car bearing Registration No.TN-60-W-4802 came from behind the cycle, in a rash and negligent manner, dashed against the cycle and the deceased fell down. He was taken to Government hospital, Manapparai. But, he died on his way to the hospital. The deceased was a construction worker, he was earning Rs. 10,000/- per month. The petitioners are his dependants, they claim a sum of Rs.15,00,000/- as compensation.



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3. A brief substance of the counter filed by the first respondent, in M.C.O.P.No.270 of 2014, is as follows:-

The first respondent driver drove the Indica Car in a slow and cautious manner, observing the road rules. It was the deceased, who suddenly crossed the Vaiyampatti National High Way Road and he invited the accident. F.I.R was wrongly registered against the driver of the Car. The vehicle was insured with the second respondent. The age, income, profession of the deceased are all denied. The claim is excessive.

4. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.270 of 2014, is as follows:-

The first respondent driver was not having valid driving licence. There is no permit or fitness certificate for the vehicle. The manner of accident as narrated in the petition is wrong. It was the deceased, who suddenly crossed the road and he invited the accident. Contributory negligence ought to have been fixed against the deceased. The age, income and profession are all denied. The claim is excessive. Rate of interest as claimed by the petitioners is wrong.



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5. Two (2) witnesses were examined and 3 documents were marked on the side of the petitioners. No witness was examined and no document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs. 6,21,500/- as compensation.

6. Against the award, the claimants / appellants have filed this Appeal on the following grounds:-

The Tribunal failed to consider that the deceased was the only bread winner of the family. The deceased was earning Rs.6,500/- per month. But, the Tribunal fixed the income only at Rs.4,500/- per month. On the side of the appellants / claimants, it is stated that the award towards loss of consortium is very low. The Tribunal failed to consider the future prospects in fixing the loss of income and prayed the compensation to be enhanced.

7. P.W.2 was examined as an eye witness. P.W.2 has deposed that it was the car driver, who was rash and negligent. Copy of the F.I.R was marked as Ex.P1. There is no rebuttal evidence on the side of the



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respondents. There is no cross appeal or cross objection filed on the side of the insurance company. In the above circumstances, it is decided that the accident has happened due to the rash and negligent driving of the car driver. There is no dispute regarding the insurance policy. Hence, it is decided that the second respondent / insurance company is liable to pay compensation.

8. On the side of the appellants - claimants, it is stated that the deceased was working as a construction cooli worker and that he was earning Rs.200/- per month. Instead of fixing the notional income of Rs.6,500/-, the Tribunal has fixed the notional monthly income as Rs.4,500/- per month which is very low.

9. On the side of the respondents, it is stated that the deceased could not have work for all the days in a month and that the deceased might have got a job only 20 days in a month and fixing the salary of Rs.4,500/- pm., is reasonable.

10. The accident has taken place on 04.07.2011. Considering the date of accident and considering the claim petition, it is decided that the



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deceased might have earned a sum of Rs.6,500/- per month. After deducting 1/4th (Rs.1,625/-) for his own expenses, the deceased might have contributed Rs.4,875/- per month to his family members. The age of the deceased at the time of accident is 50 years. Considering the age of the deceased and nature of work, 10% future prospects is to be added. After adding 10% (Rs.487/-), the monthly income is calculated as Rs.5,362/-. Considering the age of the deceased (50 years), multiplier '13' is applicable and the loss of income is calculated as Rs.8,36,472/-(Rs.5,362/-X 12 X 13). Considering the dictum of the Hon'ble Supreme Court in **Pranay Sethi's** Case, the claimants are entitled to Rs.70,000/- towards conventional charges.

11. The total compensation is calculated as follows:-

Loss of income	: Rs.8,36,472/-	
Conventional charges	: Rs. 70,000/-	
Total compensation	: Rs.9,06,472/-	(rounded off to Rs.9,06,500/-)

The same is rounded off to Rs.9,06,500/-



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12. This appeal is partly allowed. No costs.

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(i) The compensation awarded by the Tribunal is enhanced from Rs.6,21,500/- to Rs.9,06,500/-.

(ii) The first appellant- wife of the deceased is entitled to Rs.3,06,500/- with proportionate interest and costs; the appellants 2 to 5 / claimants 2 to 5 are entitled to Rs.1,50,000/- each with proportionate interest.

(iii) The second respondent herein - insurance company, is directed to deposit the entire compensation of Rs.9,06,500/- (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the appellants 1 to 3 herein / major claimants are permitted to withdraw the award amount as apportioned by this Court, on filing proper petition before the Tribunal, less any amount, if already withdrawn by them. The Tribunal is directed to deposit the share amount of the minor claimants /appellants 4 & 5 herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority.



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The minor claimant mother – first appellant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

23.03.2023

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

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To

- 1.The Motor Accident Claims Tribunal –
VI Additional District Judge,
Madurai,
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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