



C.M.A.No.719 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.719 of 2024

1.Rathna
2.Gunasekar

...Appellant

Vs

1.Gulzar

2.The Correspondent Sakthikailash Womens College,
Kalappanahalli, Karimangalam Tk.

3.The Oriental Insurance Co. Ltd.,
Rep by its Branch Manager,
No.30L, Sidda Veerappachetty Street,
Dharmapuri Town.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal by enhancing the award passed by the Tribunal in MCOP.No.424/2018 dated 25.09.2019 on the file of the learned Special District Judge, Dharmapuri (MACT Court).



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For Appellant : Mr.S.Udhayakumar

For Respondent : Mr.Zakir Hussain for R3

JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 25.09.2019 in MCOP.No.424 of 2018.

2. The learned counsel for the claimant would submit that on 07.12.2017, when the deceased was walking at Dhottarthanahalli-Hanumanthapuram Road on the left side mud portion, a bus bearing Registration No.TN-24-C-8154 came in a rash and negligent manner and dashed against him, due to which he was died. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
1	Loss of Dependency	7,50,000
2	Funeral Expenses	15,000
3	Loss of Love and Affection	2,00,000
	Total	9,65,000



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3. Further, he would submit that due to the said accident, the deceased, who was aged about 5 years old, was passed away. There is no dispute with regard to the occurrence of accident and fixation of negligence. The only issue involved in the present appeal is with regard to the quantum of compensation awarded by the Tribunal. The Tribunal had awarded a sum of Rs.50,000/- per annum as notional income of the deceased by applying 15 as multiplier.

4. By referring the judgment rendered by this Court in ***C.M.A.No.2372 of 2022***, wherein a sum of Rs.60,000/- per annum was fixed as notional income for the deceased, who was aged about 10 years, he would request this Court to apply the said principle and award a sum of Rs.60,000/- per annum as notional income of the deceased.

5. Mr.Zakir Hussain, learned counsel takes notice on behalf of the 3rd respondent and would submit that the amount awarded by the Tribunal is just and reasonable and hence, he requests this Court to confirm the same.



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6. Heard the learned counsel for the appellant and the respondents and also perused the documents available on records.

7. In the present case, the only issue involved is pertaining to the fixation of notional income of the deceased. At the time of accident, the deceased was aged about 5 years and the Tribunal had fixed a sum of Rs.50,000/- per annum as notional income of the deceased. However, in a similar situation, this Court awarded a sum of Rs.60,000/- per annum as notional income of the deceased, who was aged about 10 years old in ***C.M.A.No.2372 of 2022***. Therefore, by following the said judgment, this Court is inclined to fix a sum of Rs.60,000/- per annum as notional income of the deceased. Hence, by applying 15 as multiplier, the loss of income would be calculated as follows:

$$\text{Rs.60,000/- (notional income)} * 15 \text{ (multiplier)} = \text{Rs.9,00,000/-}$$

8. Further, it appears that no amount was awarded towards Transportation and Loss of Estate. Hence, a sum of Rs.10,000/- is awarded towards Transportation and a sum of Rs.15,000/- is awarded towards Loss of Estate.



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That apart, since the amount awarded towards loss of Love and Affection appears to be on the higher side, the same stands reduced to a sum of Rs.80,000/- [Rs.40,000/- each].

9. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Loss of Dependency	7,50,000	9,00,000
2	Funeral Expenses	15,000	15,000
3	Loss of Love and Affection	2,00,000	80,000
4	Loss of Estate	Nil	15,000
5	Transportation	Nil	10,000
	Total	9,65,000	10,20,000

9. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.10,20,000/-. Accordingly, the award amount stands increased from a sum of Rs.9,65,000/- to Rs.10,20,000/-. In all other aspects, the award of the Tribunal stands confirmed. It is also made clear that the compensation will be awarded to the claimants in the following proportions:



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i) Father of the deceased – Rs.5,00,000/-

ii) Mother of the deceased – Rs.5,20,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the 3rd respondent is directed to deposit a sum of Rs.10,20,000/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.424 of 2018 dated 25.09.2019 on the file of the learned Special District Judge, Dharmapuri (MACT Court). Upon such deposit, the Tribunal is directed to transfer the award amount to the claimants to their respective bank accounts, as per the proportion determined by this Court, by way of RTGS, within a period of three weeks from the date of deposit and receipt of the Bank details obtained from the claimants. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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KRISHNAN RAMASAMY,J.

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