



C.M.A.No.749 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.749 of 2023

Malathy,
W/o Anbalagan

... Appellant

Vs.

1. Anand Institute of Higher Tech,
Kalasalingam Nagar Old Mahabalipuram Road,
Kazhpattur Chengalpet, Kanchipuram - 603 103.04.2018
(R1-Already set exparte in lower Court)
(R1 - Notice may be dispense with)

2. ICICI Lombard Gen.Ins.Co.Ltd.,
No.145, Chottabai Centre,
Nungambakkam High Road,
Chennai - 600 034.

3. Malliga,
W/o Angalagan

4. Rajendran,
S/o Duraikannu

... Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor



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Vehicles Act,1988, against the order and decreetal order dated 15.10.2020 in

M.C.O.P.No.5239 of 2015 on the file of the Motor Accident Claims Tribunal,

SPL-Sub Court II of Small causes, Chennai.

For Appellant : Mr.J.Mahalingam

For Respondents : Mr.R.V.Sivaraj
for R3 & R4
R1-exparte
R2-No appearance.

JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

This Civil Miscellaneous Appeal has been filed by the 1st claimant challenging the order and decreetal order dated 15.10.2020 passed in MCOP.No.5239 of 2015 by the Motor Accidents Claims Tribunal, Special Sub Court II, Chennai, by which, a sum of Rs.21,96,800/- was granted as compensation to the claimants, in which, the 1st claimant/appellant herein was awarded a sum of Rs.13,96,800/- as compensation.

2. The case of the claimants in the claim petition is that on 20.04.2015 at about 4.40 p.m., while the deceased was riding his motor cycle bearing Reg.No.TN-25-AT-2884 at old Mahabalipuram Road, Semmancherry from South to North, a private bus bearing Registration No.TN-19-8239 driven in a



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rash and negligent manner by its driver, endangering the public safety came at a dangerous speed from the same direction and dashed against the deceased at the back side and caused the death of the deceased. the claim Petition was filed claiming a sum of Rs.75,00,000/- against the 1st and 2nd respondents, the owner of the private bus and the insurer of the said private bus.

3. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of a private bus bearing Reg.No.TN-19-8239 and awarded a sum of Rs.21,96,800/- as compensation to the claimants and as the 1st respondent/ owner of the private bus had insured with the 2nd respondent insurance company, the 2nd respondent was directed to pay the award amount to the claimants.

4. Challenging the quantum awarded by the Tribunal, vide award dated 15.10.2020 made in M.C.O.P.No.5239 of 2015, the 1st claimant/wife of the deceased has come out with the present appeal.

5. (i)The learned counsel for the appellant submitted that though the claimants have claimed a sum of Rs.75,00,000/-, the Tribunal has awarded a



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meagre sum of Rs.21,96,800/-, without considering the evidence on record and

principles laid down by the Hon'ble Supreme Court. The Tribunal failed to consider the evidence of P.W.1, P.W.2 and P.W.3 while assessing the compensation regarding the earnings of the deceased. The deceased was working as electrician (ITI Diploma Holder) at Sathyabama University and was also doing electrical work privately. The working hours of the University is only from 2.00 pm. to 10.00 p.m. and during morning hours, he used to undertake private electrical work and was earning Rs.10,000/- separately apart from the salary received by him from the University. Learned counsel would further state that the deceased husband was having SB account at Indian Bank and the account statement marked as Ex.P4 shows a sum of Rs.1,04,704/- credited to the deceased account by Sathyabama University from January,2014 to December 2014. His bank statement shows the deposit of Rs.1,56,500/- as per Ex.P4, and Rs.51,796/- which was credited to his account was earned from the private electrical work done by the deceased before his working hours in the University. Thus, the deceased was earning Rs.13,041/- per month.

(ii) Learned counsel for the appellant would further state that in the year 2015 January to till his death i.e., on 30.04.2015, for 4 months, a sum of Rs.26,620/- was deposited in his account as salary by the University, apart from



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a sum of Rs.53,182/- credited by the deceased totalling Rs.80,802/-, has been

credited as income of the deceased. If the said sum is divided by 4, it comes to

Rs.20,200/- per month. Therefore, the deceased was earning a sum of

Rs.20,200/- per month, for the past four months before his death. As the

deceased was aged 27 years at the time of death and when 40% future prospects

i.e., $20200 + 8080$ (i.e., 40% of 20200) = 28,280/- has to be taken as per Sarala

Varma and others v. Delhi Transport Corporation (2009) 6 SCC 121 and

deducting 1/3 towards the personal expenses and applying the multiplier 17 as

per the rulings of the Hon'ble Supreme Court as per his age, the total amount

comes to Rs.38,35,200/- ($18,800 \times 12 \times 17$). Therefore, the learned counsel

prays to award a sum of Rs.38,35,200/- as compensation under the head of

"compensation for loss of pecuniary benefits to the legal heirs of the deceased"

instead of a meagre sum of Rs.20,46,800/- under the said head.

6. Heard the learned counsel for the appellant as well as the learned counsel for the 3rd to 4th respondents/mother and father of the deceased and perused the materials available on record. The 1st respondent was set exparte before the Tribunal. There was no representation for the 2nd respondent/Insurance Company.



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7. The appellant Insurance Company has filed this appeal mainly questioning the quantum of the award passed by the Tribunal. The Tribunal has awarded a total sum of Rs.21,96,800/- as compensation to the claimants along with 7.5% interest and costs.

8. It is not in dispute that the deceased was as an electrician in Sathyabama University and was earning a sum of Rs.10,750/- per month. However, it is stated by the claimants that the deceased was also doing private electrical work and earning separately apart from the salary received by him from the Sathyabama University. Though the bank statement of the deceased, Ex.P4 was produced to show that the deceased was earning more than the salary by doing private work, the Tribunal has not considered the same as the claimants have not proved the same by oral or documentary evidence. The Tribunal has considered only Ex.P9 salary slip which shows that the deceased was earning a sum of Rs.10,750/-. The excess amount credited into account of the deceased was not clearly proved that it was the amount earned by the deceased by doing private electrical work. We find that there is no error in the said finding of the Tribunal warranting interference by this Court.

9. The deceased was aged about 27 years at the time of accident. The



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Tribunal added 40% towards future prospects and deducted 1/3rd towards personal expenses which comes to Rs.1,20,400/- per annum and applying the multiplier 17, awarded a sum of Rs.20,46,800/- (1,20,400x17) towards loss of dependency. Considering the date of accident, age, avocation and income of the deceased, the amount awarded by the Tribunal towards loss of dependency is not meagre as stated by the appellant and the amount awarded by the Tribunal, does not warrant any interference by this Court. The appellant did not dispute the amount awarded by the Tribunal under other heads, i.e., loss of estate, funeral expenses, loss of consortium etc. Therefore, the award passed by the Tribunal is confirmed.

10. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.21,96,800/- awarded by the Tribunal as compensation to the appellant herein and respondents 3 & 4/claimants, along with interest and costs is confirmed. The 2nd respondent/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant and respondents 3 and 4/claimants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with



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proportionate interest and costs, less the amount if any, already withdrawn. No

costs.

(J.N.B., J.) (R.S.V., J.)
22.11.2024

Index: Yes/No
vsi

To

The Motor Accident Claims Tribunal,
SPL-Sub Court II of Small Causes,
Chennai.



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