



C.M.A.No.677 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

C O R A M

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

C.M.A.No.677 of 2024

1.Selvarani
2.Chinnathambi

...Appellant

Vs

1.Ashokan
2.The Branch Manager,
United India Assurance Company Limited,
TP Claims Hub, No.81, Katpadi Road,
T.K.M.Complex, 2nd Floor,
Vellore 632 004.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award against the judgement and decree dated 30.08.2022 made in MACTOP.No.395 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

For Appellant : Ms.A.Subadra

For Respondent : Ms.R.Sree Vidhya for R2



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JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 30.08.2022 made in MACTOP.No.395 of 2018.

2. The learned counsel for the claimant would submit that on 11.03.2018, when one Siva @ Sivasankar was travelling in a two-wheeler bearing Registration No.TN-09-BE-1402 as a pillion rider from Kallakurichi to Tiruvannamalai, a Van bearing Registration No.TN-73-B-9093 came in a rash and negligent manner and dashed against the two-wheeler, due to which he was died on the spot. 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 Income	6,00,000
2	Future Prospects	50,000
3	Loss of Consortium	88,000
4	Loss of Estate	16,500
5	Funeral Expenses	16,500
	Total	7,71,000

3. He would further submit that at the time of accident the deceased was



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aged about 9 years. By referring the judgement rendered by this Court in **C.M.A.No.2372 of 2022**, she would submit that for the accident occurred in the year 2018, this Court had fixed the notional income of the deceased, who was aged about 10 years, as a sum of Rs.5,000/- per month. Hence, she requests this Court to apply the same to the present case and pass appropriate orders. Further, with regard to all the other heads, since the same are just and reasonable, she requests this Court to confirm the same.

4. In reply, the learned counsel appearing for the respondent would submit that the compensation awarded by the Tribunal is just and fair and hence, he requests this Court to confirm the same.

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

6. In the present case, the deceased was aged about 9 years old and the Tribunal had fixed the notional income as a sum of Rs.40,000/- per annum. There is no dispute with regard to the occurrence of accident. The only issue



that has to be decided is with regard to the fixation of notional income of the deceased. As contended by the learned counsel for the appellant, in **C.M.A.No.2372 of 2022**, while awarding compensation, this Court had fixed the notional income of the deceased, who was aged about 10 years, as a sum of Rs.60,000/- per annum. The said judgment will squarely applicable to the present case. 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 the multiplier as 15, the loss of income would be calculated as follows:

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

7. Further, since the deceased is minor, no future prospects is required to be added. Hence, the compensation of a sum of Rs.50,000/- awarded by the Tribunal towards Future Prospects is liable to be set aside. Accordingly, the same is set aside.

8. At this juncture, the learned counsel for the respondent would submit that in the present case, though 4 persons were traveled in a two-wheeler at the time of accident, no negligence was fastened against the rider of the two-



wheeler. Hence, he requests this Court to re-consider the aspect of fastening of liability against the rider of two-wheeler.

9. Upon perusal of the award passed by the Tribunal, it appears that after considering the oral and documentary evidences, the Tribunal had rightly fastened the entire liability against the Van driver and there is no evidence to show that the accident was occurred due to the fault on the part of rider of the two-wheeler. Further, it is not fair to fasten the liability against the rider of the two-wheeler for traveling with 3 pillion riders since it is only a statutory violation, for which, only penalty can be imposed by the concerned Authority. Therefore, since the accident was occurred only due to the rash and negligence on the part of the Van driver, no liability can be fastened against the rider of two-wheeler. That apart, no appeal was filed by the respondent challenging the aspect of fastening of liability against the Van driver. When such being the case, this Court does not find any force in the submission made by the learned counsel for the respondent. Hence, the negligence fixed by the Tribunal stands confirmed.



10. 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 Income	6,00,000	9,00,000
2	Future Prospects	50,000	Nil
3	Loss of Consortium	88,000	88,000
4	Loss of Estate	16,500	16,500
5	Funeral Expenses	16,500	16,500
	Total	7,71,000	10,21,000

11. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.10,21,000/-. Accordingly, the award amount stands increased from a sum of Rs.7,71,000/- to Rs.10,21,000/-. In all other aspects, the award of the Tribunal stands confirmed.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to deposit a sum of Rs.10,21,000/- along with interest and costs, less the amount already deposited and also less the interest for the waiver period, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MACTOP.No.395 of 2018 on



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the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai. Upon such deposit, the Tribunal is directed to transfer the award amount to the claimants to their respective bank accounts, 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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