



C.M.A.(MD)No.1373 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.12.2023

PRONOUNCED ON : 10. 01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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1.Velthai

2.Minor.Sudha

3.Minor.Vanitha

4.Muthulakshmi

5.Madasamy Devar

... Appellants / Claimants

*(Minor appellants 2 and 3 are represented by their mother,
natural guardian and next friend Velthai / 1st appellant)*

Vs.

1.Bashkar

2.The Branch Manager,
New India Assurance Co., Ltd.,
No.46, Moore Street (1st Floor),
Chennai-600 001.

... Respondents / Respondents



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 09.01.2004 passed in M.C.O.P.No.249 of 2002 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Tenkasi, Tirunelveli District.

For Appellants : Mr.R.J.Karthick

For Respondents : Mr.N.Dilip Kumar

JUDGMENT

This Civil Miscellaneous Appeal has been directed against the Judgment and decree dated 09.01.2004 passed in M.C.O.P.No.249 of 2002 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Tenkasi, Tirunelveli District by the appellants / claimants challenging the quantum of the award.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.



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3. The brief facts in a nutshell are as follows:

(i) This is a fatal case. On 03.10.2002, the deceased Kumarpandian was driving the Maruthi Suzuki Car bearing registration No.TN01 - 4716 from east to west in Tirunelveli to Tenkasi main road. When he reached the western side of Karumpuliyutru bus stop, one Mahindra van bearing registration No. 05-F 1535 was driven by its driver in a rash and negligent manner from west to east on the same road dashed against the said Maruthi Car. As a result of the said collision, the said Kumarpandian died on the spot itself and other passengers sustained grievous injuries all over their body. The dead body of the deceased was taken to Tirunelveli TWC Hospital and postmortem was done on the same day.

(ii) Hence, the legal heirs of the deceased Kumarpandian / claimants have filed M.C.O.P.No.249 of 2002 before the Motor Accident Claims Tribunal (Additional Sub Court), Tenkasi, Tirunelveli District, seeking compensation for the loss of life of the deceased Kumarpandian. The 1st petitioner is the wife of the deceased. The 2nd and 3rd petitioners are the minor children of the deceased. The 4th and 5th petitioners are the parents of the deceased. The 2nd respondent had filed a counter refuting the



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allegations put forth in the claim petition.

(iii) After considering the oral and documentary evidence and the arguments submitted by the respective parties, the learned Tribunal had proceeded to conclude that the accident happened only because of the rash and negligence of the 1st respondent / driver of the Mahindra van bearing registration No. 05-F 1535. Since the vehicle was insured by the 2nd respondent/ Insurance Company, the learned Tribunal has fixed the liability on the part of the respondents and also awarded a sum of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) as compensation with interest at 9% p.a. from the date of petition till the date of realisation. Aggrieved by that award, the claimants have filed the present appeal for seeking enhancement.

4. The learned counsel for the appellants / claimants vehemently submitted that the Tribunal has awarded a very low and meagre sum of compensation. The Tribunal ought to have fixed the notional income of the deceased at Rs.4,500/- (Rupees Four Thousand Five Hundred only). After



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deducting 1/3rd for his personal expenses, remaining 2/3rd i.e., an amount of Rs.3,000/- (Rupees Three Thousand only) ought to have calculated for the welfare of the family of the deceased. According to the driving license Ex.P-8 the deceased was 38 years, the relevant multiplier 16 ought to have taken into consideration and calculated the loss of income in accordance to law. The Tribunal has not considered the relevant materials and it has also not followed the principles of assessment before passing the award. Therefore, this is a fit case for enhancement.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company has submitted that the Tribunal had considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. In the instant case, no doubt, the learned Tribunal had not passed an award under the various heads as mandated by the Motor Vehicles Act. The learned Counsel appearing for the 2nd respondent further submitted that the five claimants have claimed that the deceased was earning Rs.10,000/- (Rupees Ten Thousand only) per month as a driver. But, no documentary evidence was filed to prove the same before the Tribunal. The learned Counsel appearing for the 2nd respondent has circulated a departmental



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letter of the Government of Tamil Nadu dated 28.01.2023 along with the list of schedule of maximum and minimum wages. In which, the minimum wages was more than Rs.50/- (Rupees Fifty only) per day. Hence, the order of the Tribunal is in accordance to law and the same has to be confirmed.

6. Heard the learned counsel on either side and perused the materials available on record. On the side of the claimants, two witnesses, P.W.1 and P.W.2 were examined and documents Ex.P1 to Ex.P8 were marked. On the side of the respondents, neither any witness was examined nor any document was marked. P.W.1 is the claimant. P.W.2 is the owner of the Maruthi Suzuki Car bearing registration No.TN01 - 4716. Ex.P1 is the F.I.R. Ex.P2 is the copy of Postmortem report. Ex.P3 is the copy of Motor Vehicle Inspection report. Ex.P4 is the Rough Sketch. Ex.P5 is the Observation mahazar. Ex.P6 is the Charge Sheet. Ex.P7 is the copy of the judgment and decree in C.C.829 of 2001. Ex.P8 is the driving license. After considering the above oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the rash and negligent driving of the driver of the mini-lorry belonging to the first respondent.



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7. A careful perusal of the materials available on record would reveal that the maximum and minimum wage per day in terms of the said schedule is Rs.106.45 (Rupees One Hundred and Forty Six and Forty Five Paise only), under the head Motors Transport. In view of the same, the notional income of the deceased who was a driver has to be fixed at Rs.3180 (Rupees Three Thousand One Hundred and Eighty only) per month. Since the age of the deceased was 38 years, the relevant multiplier 15 should be taken into consideration. The income of the deceased could be arrived at Rs.5,72,400/- (Rupees Five Lakhs Seventy Two Thousand Four Hundred only) that is, $\text{Rs.}3180 \times 15 \times 12$. Adopting the proposition in *Pranay Sethi Case*, 40% is calculated towards future prospects and 40% of Rs.5,72,400/- (Rupees Five Lakhs Seventy Two Thousand Four Hundred only), that is Rs.2,28,960/- (Rupees Two Lakhs Twenty Eight Thousand Nine Hundred and Sixty only) is taken towards future prospects. Thus, the total income would arrive at Rs.8,01,360/- (Rupees Eight Lakhs One Thousand Three Hundred and Sixty only). After deducting $\frac{1}{3}$ rd for his personal expenses, the loss of income arrives at Rs.5,34,240/- (Rupees Five Lakhs Thirty Four Thousand Two Hundred and Forty only). Hence, the loss of dependency would reveal at Rs.5,34,240/- (Rupees Five Lakhs Thirty Four Thousand Two Hundred and Forty only).



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8. In view of the facts and circumstances of this case, the award passed by the learned Tribunal has to be modified as under:

S.No.	Description	Amount
1.	Loss of dependency	Rs.5,34,240/-
2.	Consortium (filial, spousal & parental)	Rs.2,00,000/-
3.	Loss of estate & funeral expenses	Rs. 30,000/-
4.	10% increase in conventional head as per Pranay Sethi case	Rs. 3,000/-
	Total	Rs. 7,67,240/-

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,50,000- (Rupees One Lakh and Fifty Thousand only) is hereby enhanced to Rs.7,67,240/- (Rupees Seven Lakhs Sixty Seven Thousand Two Hundred and Forty only).

10. The second respondent/ Insurance Company is directed to deposit the enhanced compensation amount with 7.5% interest and costs to the credit of M.C.O.P.No.249 of 2002 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Tenkasi. within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the



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amount, if any already deposited. On such deposit, the appellants / claimants are entitled to get their shares as per the apportionment fixed by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. The appellants 1, 4 and 5 / claimants are permitted to withdraw their shares together with interest and the share of the minor claimants / appellants 2 and 3 shall be deposited in any one of the Nationalised Banks till they attain majority. The 1st appellant, who is the mother of the minor claimants is permitted to withdraw the interest of minors once in three months directly from the Bank. No costs.

10.01.2024

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



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To

The Motor Accident Claims Tribunal,
(Additional Sub Court),
Tenkasi,
Tirunelveli District.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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