



C.M.A.(MD)No.1506 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 04.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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1.K.Pitchaimuthu

2.Thangaraj

3.Uma Rani

4.Valli

5.Kannan

6.Kumar

... Appellants/Petitioners

Vs.

1.M/s.ABT Limited
No.10/14-15, Kalingarayan Street
Ram Nagar
Coimbatore

2.The New India Assurance Company Ltd.,
No.435, D.B.Road
R.SPuram
Coimbatore

...Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow this appeal and enhance the award amount in MCOP.No.38 of 2009 on the file of the Motor Accident Claims Tribunal



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(District Judge), Karur, dated 15.06.2012.

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For Appellants : Mr.T.Selvakumaran
For R1 : No appearance
For R2 : Mr.B.Vijay Karthikeyan

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.38 of 2009 on the file of the Motor Accident Claims Tribunal (District Judge), Karur wherein the claimants have filed the above claim petition for death of the wife of the first appellant and mother of the appellants 2 to 6 herein.

2. The Tribunal has awarded a sum of Rs.1,35,000/- towards compensation @7.5% interest from the date of filing of the petition till the date of realization with proportionate costs. As against the award passed by the Tribunal, the present appeal has been preferred by the appellants/ petitioners.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.



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4. The brief facts of the petition averments are:

The deceased Sampooranam aged about 64 years at the time of accident and on 04.12.2008 at about 6.00 p.m, the first petitioner, who is the husband of the deceased Sampooranam was riding his T.V.S.50 Moped bearing Registration No.TN 45B 7632 from South to North on the left side of the road. The deceased Sampooranam travelled as a pillion rider. When T.V.S.50 Moped was nearing north of Thirukampuliyur Roundana, the driver of the first respondent had driven the tanker lorry bearing Registration No.T.N.38-0911 in a rash and negligent manner and dashed against the deceased vehicle. The deceased who was travelling as a pillion rider sustained multiple injuries on her head and all over the body and died on the spot. The first petitioner sustained injuries on his right leg, right shoulder, backbone and left leg and he had taken treatment. The accident occurred due to the rash and negligent driving on the part of the driver of the lorry. At the time of accident, the deceased was earning a sum of Rs.6,000/- per month by doing milk vending business and thereby, the petitioners have filed the claim petition claiming compensation for Rs.3,00,000/-



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5. The brief facts and counter filed by the second respondent:

The claim petition is not maintainable either in law or on facts and the petitioner is put to strict proof of involvement of the lorry in the accident and the monthly income of the deceased. The petitioners are not the dependents of the deceased Sampooranam. There is no negligence on the part of the driver of the lorry and thereby, the respondent/Insurance Company is no way liable to pay compensation to the petitioners and hence, the petition is liable to be dismissed.

6. In order to prove the case of the petitioners before the Tribunal, the first petitioner was examined as P.W.1 and exhibits Exs.P.1 to Ex.P.6 documents were marked and on the side of the respondents, R.W.1 was examined and no documentary evidence adduced on the side of the respondents.

7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has taken the age of the deceased as 65 years and in the absence of document to prove that the deceased was doing milk vending business has taken the income of the deceased at Rs.15,000/- per annum and after deducting 1/3rd of income towards



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personal expenses adopting multiplier 5 and awarded a sum of Rs.50,000/- towards loss of income based on the Schedule II of the Motor Vehicles Act. The Tribunal has awarded Rs.25,000/- towards loss of love and affection and conjugal happiness to the first petitioner and awarded a sum of Rs.10,000/- each to the petitioners 2 to 6 towards loss of love and affection. Rs.5,000/- was awarded towards transport expenses and Rs.5,000/- towards funeral expenses. In total, a sum of Rs. 1,35,000/- with 7.5% interest was awarded. Aggrieved over the award of compensation passed by the Tribunal, the petitioners have preferred the present Civil Miscellaneous Appeal for enhancement of compensation.

8. The learned counsel appearing for appellants/petitioners had contended that these petitioners are dependents of the deceased and the deceased was aged about 65 years on the date of accident and she died due to the accident. The said accident was occurred only due to the rash and negligent driving on the part of the driver of the first respondent. The Tribunal has failed to take note of the fact that the deceased was earning a sum of Rs.6,000/- per month by doing milk vending business and had wrongly applied multiplier 5 instead of 7. The Tribunal ought to have granted Rs.20,000/- each for love and affection. Therefore, the award passed by the Tribunal is liable to be enhanced.



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9. The learned counsel appearing for the second respondent/Insurance Company had contended that the deceased was aged about 65 years and the petitioners have not produced any document to show that the deceased was doing milk vending business. As per II Schedule of Motor Vehicles Act, 1988, the Tribunal has correctly taken the income of the deceased as Rs.15,000/- p.a. and also correctly applied the multiplier of 5. Hence, the award passed by the Tribunal is reasonable and the present Civil Miscellaneous Appeal is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

11. In this case, there is no controverting that the deceased died in a road accident and the first respondent's vehicle was insured with the second respondent. According to the learned counsel for the appellants, the accident took place due to the rash and negligent driving on the part of the driver of the first respondent and the deceased was aged about 65 years at the time of accident. Though age of the deceased



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was 65 years, no documents have been produced by the petitioners.

However, on perusal of Ex.P2-post-mortem certificate, it reveals that the deceased was aged about 65 years on the date of accident. Hence, this Court has taken the age of the deceased as 65 years on the date of the accident. In order to prove the income of the deceased, no independent witness was examined and no specific evidence has been adduced on the petitioners' side. However, PW1-Pitchaimuthu (husband of the deceased) has deposed that the deceased was doing milk vending business and earned a sum of Rs.6,000/- per month. Considering the age and nature of work of the deceased, the income would be taken as Rs.4,000/- per month and thereby, the annual income comes to Rs.48,000/-. Considering the dependency, deducting an amount of $1/4^{\text{th}}$ ie. $\text{Rs.}48,000/- \times 1/4 = \text{Rs.}12,000/-$ towards personal expenses, the annual income of the deceased comes to Rs.36,000/-. Considering the age of the deceased, multiplier 7 is to be adopted as per Sarala Varma Case. Thereby, the award amount comes to $(\text{Rs.}36,000/- \times 7) = \text{Rs.}2,52,000/-$.

12.The learned counsel for the appellants had produced the judgement of the Hon'ble Division Bench of our High Court reported in **2019 (1) TN MAC 54 (DB)(Andal and others Vs. Avinav Kannan and another)** and the judgment of the Hon'ble Supreme Court reported



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in **2014 (1) TN MAC 459 (SC) (Syed Sadiq etc., Vs. Divisional Manager, United India Insurance Co.Ltd.,).**

13. On a careful perusal of the judgments cited supra, it is clear that with regard to the annual income of the deceased, each and every case has to be decided on independent facts and depending upon the nature of the work done by the deceased.

14. The learned counsel for the appellants had relied upon a judgment of the Hon'ble Supreme Court reported in **2003 ACJ 12 (Nagappa Vs. Gurudayal Singh and others)** in which paragraph No. 21 has held as follows:

"21.For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases, there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section(4) to Section 166, even report submitted to the Claims Tribunal under sub-section(6) of Section 158 can be treated as an application for compensation under the M.V.Act. If required, in appropriate cases, Court may permit amendment to



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the claim petition."

15. In view of the above said judgment, this Court awards an excess compensation to the appellants/claimants than they claimed in the petition. Thereby, this Court has decided to award a sum of Rs.2,52,000/- towards loss of income of the deceased. The Tribunal has failed to consider the evidence adduced by the petitioners with regard to milk vending business of the deceased and also wrongly applied multiplier of 5 and thereby, the order of the Tribunal is liable to be modified as follows:

1.	Loss of Income	Rs.2,52,000/-
2.	Loss of Estate	Rs. 18,000/-
3.	Loss of Consortium	Rs. 48,000/-
4.	Funeral Expenses	Rs. 18,000/-
	Total	Rs.3,36,000/-
	Rounded off	Rs.3,50,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.38 of 2009 is modified to the effect that the petitioners are entitled for a sum of Rs. 3,50,000/- with 7.5 % interest per annum from the date of filing of the claim petition till the date of realisation of the compensation. It is brought to the notice of the Court that the second respondent herein/Insurance Company has already deposited the entire amount



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awarded by the Tribunal. Therefore, the second respondent /insurance company is directed to deposit the remaining award amount with proportionate interest and costs, within a period of two months from the date of judgement of this Court. On such deposit, the petitioners are permitted to withdraw the entire amount along with interest and costs by filing application before the Tribunal. Further, the petitioners are directed to pay the balance Court Fee for the enhanced amount within a period of 10 days from the date of judgement of this Court.

17. Accordingly this Civil Miscellaneous Appeal is partly allowed.

No costs.

04.01.2024

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

1. The Motor Accident Claims Tribunal
/District Judge, Karur
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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