



C.M.A(MD)No.96 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.01.2024

CORAM

THE HON'BLE MR.JUSTICE S.SRIMATHY

C.M.A(MD)No.96 of 2021

and

CROSS.OBJ(MD)No.31 of 2021

C.M.A(MD)No.96 of 2021

The Claims Manager,
Shree Ram General Insurance Company Limited,
S.Ramachandra Street,
Saravana Nagar,
Sevaram, Perungudi,
Chennai – 600 096.

... Appellant

Vs.

Karuppasamy (Died)

1. Vennila

2. B. Arjunan

... Respondents

[It is recorded in the memo, dated 24.06.2019]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar @ Srivilliputhur, in MCOP No.101 of 2018, dated 28.02.2020.



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For Petitioner : M/s.D.Sivaraman

For Respondents : Mr.M.Thirunavukkarasu, for R-1
R-2 No appearance

CROSS.OBJ(MD)No.31 of 2021

Vennila

...Cross Objector

Vs.

1. The Claims Manager,
Shree Ram General Insurance Company Limited,
S.Ramachandra Street,
Saravana Nagar,
Sevaram, Perungudi,
Chennai – 600 096.

2. B. Arjunan

...Respondents

For Petitioner : Mr.M.Thirunavukkarasu

For R-1 : M/s.D.Sivaraman

R-2 No appearance

JUDGEMENT

The Civil Miscellaneous Appeal is filed by the Insurance Company to set aside the Judgment and Decree passed by the Motor Accident Claims Tribunal. The Cross Objection is filed by the claimant.

2. The contention of the Insurance Company / Appellant is that the parents of the deceased are entitled after deducting 1/3 of the



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amount. If the deceased mother alone is available, as a “widowed mother” she is entitled to 50%. In the present case, a peculiar situation arises. On the date of filing, both the parents were alive. Pending Civil Miscellaneous Appeal the father died. Then the question arises whether the mother entitled to after deducting 1/3rd or 50%. The Learned Counsel appearing for the Insurance Company submitted that the situation prevailing at the time of accident ought to be taken for fixing the deduction. However, the Learned Counsel appearing for the claimant submitted the subsequent circumstances also ought to be taken for fixing the deduction. For which the claimant relied on the judgment dated 10.01.2013 passed in CMA No.114 of 2013, wherein it is held that

“In the case on hand, before the determination of the quantum of compensation, husband of the 1st respondent also died and thus she became a widow. In view of the above this Court is inclined to deduct only 1/3rd from the annual income of the deceased, for the purpose of computing the dependency compensation.”

3. After hearing the rival submissions this Court had given its anxious consideration. The compensation granted to the legal heirs of the deceased is to protect the family members due to sudden death of the



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deceased and also for sudden loss of the member. The salary, age, with notional future prospects of the deceased are taken into account to fix the compensation. The compensation is not granted based on the future situation of the family members. In future the parents may die, the spouse may die and if all these future deaths are taken into account for fixing the compensation there will not be any end, since anyone born in this world ought to die. Moreover, the judgment cited by the claimant is not applicable since there was not any issue framed to decide the issue. It is only passing remark and hence the said judgment is not applicable. Therefore, this Court is of the considered opinion that the situation prevailing at the date of death of the victim ought to be taken into account for fixing the deduction. And cannot take the subsequent death of the parents for fixing the deduction. In the present case, the father was alive at the time of accident, hence 1/3rd would be the correct fixation.

4. In the cross appeal the claimant's contention is that the Tribunal had fixed the notional salary as Rs.7,000/- which is on lower side for the Mason. This Court normally fixes Rs.8,000/- as minimum notional salary for any person. And for Mason, painter as Rs.10,000/- or



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Rs.12,000/- etc. In the present case the deceased was aged about 27 years and Rs.12,000/- would be the appropriate fixation of notional income and accordingly fixes the notional income as Rs.12,500/-. The award is modified as stated supra.

Monthly income of the deceased is	Rs.12,500
ADD 40% future prospectus	Rs. 5,000

	Rs.17,500

Since the deceased was aged about 27 years multiplier 17 is to be applied.

	Rs.17,500 x 12 x 17
=	Rs.35,70,000/-

DEDUCT 1/3 personal expenses=	Rs.35,70,000 – 11,90,000
<u>Loss of income</u>	<u>= Rs.23,80,000/-.</u>

5. Accordingly, the claimant is entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For Loss of Income	Rs.14,28,000/-	Rs.23,80,000/-	enhanced
2.	For Loss of love and affection to the claimant	Rs. 25,000/-	Rs. 25,000/-	confirmed
3.	For loss of articles	Rs. 10,000/-	Rs. 10,000/-	confirmed
4.	For funeral expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
Total		Rs. 14,78,000/-	Rs. 24,30,000/-	



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with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

6. In view of the said modification, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.14,78,000/-granted by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Virudhunagar @ Srivilliputhur, in M.C.O.P No.101 of 2018, is enhanced to Rs.24,30,000/-with 7.5% interest. The Insurance Company is directed to deposit the award amount along with interest and costs, within a period of Eight weeks from the date of receipt of a copy of the Order, less the amount if already deposited. On such deposit, the claimant is permitted to withdraw the same, as per Law. The claimant is directed to pay the balance Court fee. No costs.

7. With these observations, this Civil Miscellaneous Appeal and Cross Objection are disposed of. No Costs.

23.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA



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To

1. The Chief Judicial Magistrate Court,
Virudhunagar @ Srivilliputhur.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Order made in
C.M.A(MD)No.96 of 2021

23.01.2024