



C.M.A(MD)No.463 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.463 of 2023,
Cross Objection (MD)No.6 of 2024
and
CMP(MD)Nos.5831 and 16626 of 2023

C.M.A(MD)No.463 of 2023:

M/s.National Insurance Company Limited
through its Branch Manager,
Malappuram District, Kerala.

... Appellant

Vs.

1.Jaya Rani
2.Satheesh
3.Jeneesh
4.Saji Mon
5.Abdul Nazar

... Respondents

*(3rd respondent is declared as major and the
guardianship of his mother 1st respondent
Jaya Rani is discharged vide common order
dated 05.01.2024 made in CMP(MD)Nos.
16623 and 16624 of 2023)*

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree made in M.C.O.P.No.49 of 2018 dated 28.10.2022 on the file of the Motor Accident Claims Tribunal/ Sub Court, Kuzhithurai.



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For Appellant
For R1 to R3
For R4 and R5

: M/s.P.Malini
: Mr.M.R.Sreenivasan
: No appearance

Cross Objection (MD)No.6 of 2024:

1.Jaya Rani
2.Satheesh
3.Jeneesh

... Cross Objectors

Vs.

1.M/s.National Insurance Company Limited
through its Branch Manager,
Malappuram District, Kerala.

2.Saju Mon
3.Abdul Nazar

... Respondents

PRAYER: Cross Objection is filed under Order 41 Rule 22 of Civil Procedure Code, against the fair and decretal order made in M.C.O.P.No.49 of 2018 dated 28.10.2022 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kuzhithurai and C.M.A.(MD)No.463 of 2023 on the file of this Court notice served on 01.06.2023 to the Cross Objectors / Respondents 1 to 3.

For Cross Objectors : Mr.M.R.Sreenivasan
For R1 : M/s.P.Malini

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company.

2.It is a case of fatal. The contention of the Insurance Company is that the claimants have filed a petition indicating the monthly income of the deceased as



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Rs.75,000/-. The Tribunal had fixed the notional monthly income of the deceased as Rs.25,000/- without any evidence and the same ought to be reduced. However, this contention was vehemently opposed by the Learned Counsel appearing for the claimants stating that PW2 had deposed before the Tribunal who had indicated the monthly salary of the deceased as Rs.75,000/-.

3. After considering the rival submissions of both sides, this Court is of the considered opinion that whenever higher salary is fixed, it should be fixed based on the documentary evidence alone. If it is fixed notionally, it should be fixed appropriately. When there is no documentary evidence, the salary cannot be fixed simply based on deposition alone. Further if the monthly salary ought to be fixed as Rs.25,000/-, then the deceased would have been an income tax assessee. But no iota of evidence was filed by the claimants to prove the monthly income. Therefore, this Court is inclined to reduce the monthly salary of the deceased from Rs.25,000/- to Rs.21,000/-, since the deceased was working as a building contractor at Kerala. Future prospects were not fixed by the Tribunal, hence, this Court is granting 10% future prospects.

4. The next contention is that based on the postmortem certificate, the age



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of the deceased was fixed as 50 and the Tribunal has taken the multiplier as 13. In order to ascertain the age of the deceased, this Court directed the claimants to produce the Aadhaar Card of the deceased and the same is produced before this Court wherein it is indicated that the deceased was 50 years old. Therefore, the correct multiplier that has to be fixed is “9”. Hence, the multiplier fixed by the Tribunal as 13 is reduced to 9 by this Court.

5. The contention of the claimants is that the Tribunal has not granted proper compensation under the heads of transport expenses and loss of estate. Therefore, this Court is enhancing the loss of estate granted by the Tribunal from Rs.16,500/- to Rs.20,000/-. Also, this Court is also enhancing the transport expenses granted by the Tribunal from Rs.10,000/- to Rs.15,000/-. The compensation granted under the other heads are confirmed.

6.The modified award amount granted by this Court is as under:

i.	Monthly income of the deceased	Rs.21,000/-
ii.	Loss of future income (10%)	Rs.2,100/-
Total		Rs.23,100/-
1/3 rd of income deducted towards personal expenses		- Rs.7,700/-
After deduction		Rs.15,400/-



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Sl.No.	Head of Compensation	Modified award granted by this Court	Award granted by the Tribunal
1.	Loss of Dependency (Rs.15,400/-*12 * 9)	Rs.16,63,200/- (reduced)	Rs.26,00,052/-
2.	Loss of Consortium	Rs.1,32,000/-(confirmed)	Rs.1,32,000 /-
3.	Loss of Estate	Rs.20,000/- (enhanced)	Rs.16,500/-
4.	Funeral Expenses	Rs.16,500/- (confirmed)	Rs.16,500/-
5.	Transport Expenses	Rs.20,000/- (enhanced)	Rs.10,000/-
Total compensation granted by this Court		Rs.18,51,700/- (reduced)	Total = Rs. 27,75,052/-

7. Therefore, the appellant Insurance Company is directed to deposit Rs. 18,51,700/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares with proportionate accrued interests and costs in the ratio fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal.



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8. With the above said observation, the Civil Miscellaneous Appeal and the Cross Objection are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

14.03.2024

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

Tmg

To

1. Motor Accident Claims Tribunal/ Sub Court,
Kuzhithurai.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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