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CMA.(MD)No.515 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 515 of 2024

1.Sudalaiyandi
2.Chitra : Appellants/Petitioners

Vs.

1.Perumal
2.The New India Assurance Company Limited,
through its Branch Manager,
Branch Office No.182/22,
L.S.N High Road,
Tirunelveli Junction. : Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in MCOP No.742 of 2022 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Tirunelveli, dated 31/01/2023.

For Appellants : Mr.T.Selvakumaran

For 1st Respondent : Mr.K.Jeyamohan

For 2nd Respondent : Mr.D.Malaichamy



CMA.(MD)No.515 of 2024

J U D G M E N T

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This Civil Miscellaneous Appeal is filed seeking enhancement of the award amount made in MCOP No.742 of 2022, dated 31/01/2023 by the Motor Accident Claims Tribunal (Principal District Judge), Tirunelveli.

2.The facts in brief:-

On 15/03/2022 at about 08.00 hours, the deceased Petchimuthu was riding his motor cycle bearing registration No.TN-76-W-3352 along with one Aravind Prabakaran as pillion rider on the Ambasamudram to Papanasam main road. When he was nearing Kalyani Theatre, another motor cycle bearing registration No.TN-76-BZ-0207 which belongs to the first respondent, driven by first respondent himself in a rash and negligent manner and dashed against the deceased. As a result of which, the deceased fell down and sustained grievous injuries all over the body. He was taken to the Government Hospital, Ambasamudram and thereafter, to Tirunelveli Medical College Hospital. But without responding to the treatment, he died on 20/03/2022.

3.A case in Crime No.47 of 2022 was registered by the Ambasamudram Police Station for the offences under sections 279, 337 and 304-A IPC against the first



WEB COPY



CMA.(MD)No.515 of 2024

respondent vehicle driver. The deceased was aged about 26 years at the time of the occurrence and passed Bachelor of Engineering in Electrical and Electronics Engineering in 2018 and searching for a suitable job. Claiming compensation of Rs.50,00,000/-, the claim petition was filed by the dependents.

4.That was resisted by the Insurance Company stating that only because of the rash and negligence on the part of the deceased, the occurrence took place. Apart from that, other customary denials were made.

5.The first respondent namely the owner of the vehicle also filed a counter stating that only because of the rash and negligent act on the part of the deceased, the occurrence took place.

6.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 13 documents were marked. On the side of the respondents, no oral or documentary evidence adduced.

7.Regarding the first aspect of negligence, the Tribunal recorded a finding of fact that the occurrence took place because of the rash and negligent act of the



CMA.(MD)No.515 of 2024

WEB COPY

first respondent vehicle by taking into account of the manner of the occurrence. Accordingly, fastened the liability upon him. In respect of the compensation amount, since the deceased was only Engineering Graduate without any job, Rs.10,000/- was fixed as notional monthly income. His age was fixed on the date of the occurrence, as per the postmortem certificate entry. To that, 40% was added towards future prospects. So, the annual notional income was fixed at Rs.1,68,000/-. Half of the amount was deducted towards the personal and living expenses. So, the Loss of Dependency was fixed at Rs.84,000/-. Multiplier '17' was adopted and finally fixed the following amount after adding the conventional amounts:-

Loss of Income	Rs.14,28,000/-
Funeral expenses	Rs. 16,500/-
Transport Expenses	Rs. 10,000/-
Loss of love and affection to the petitioners each Rs.10,000/	Rs. 20,000/-
Total	Rs.14,74,500/-

8.Aggrrieved over the quantum of compensation, the claimants are before this court.

9.Heard both sides.



CMA.(MD)No.515 of 2024

10.Regarding the first aspect of negligence, no argument was advanced on the side of the Insurance Company. More-over, from the manner of the accident itself, this court can also confirm the finding of the fact recorded by the trial court on this aspect. No interference is called for.

11.Regarding the age, in the absence of any birth certificate or school certificate, it was taken into account the average age mentioned in the postmortem report. Regarding the fixation of age also, no grievance was expressed by the appellant.

12.The grievance was expressed only on the notional income fixed. By relying the judgment of the Hon'ble Supreme Court in ***S.Vasanthi and another Vs. M/s.Adhiparasakthi Engineering and another (Civil Appeal No.7180 of 2022, dated 11.10.2022,*** he would submit that a sum of Rs.30,000/- was fixed by the Hon'ble Supreme Court for the second year Engineering Graduate.

13.But here, he is an Engineering Graduate. Normally for the Engineering Graduate, Rs.15,000/- to Rs.20,000/- is taken as notional income by this court. So, Rs.20,000/- may be taken as notional income of the deceased.



Head	Award of the Tribunal	Award of this court
Loss of Income	Rs.14,28,000/-	Rs.28,56,000/-
Funeral expenses	Rs. 16,500/-	Rs. 15,000/-
Transport expenses	Rs. 10,000/-	-
Loss of love and affection to the petitioners each Rs. 10,000/-	Rs. 20,000/-	-
Loss of estate	-	Rs. 15,000/-
Filial consortium	-	Rs. 80,000/-
Total	Rs.14,74,500/-	Rs.29,66,000/-



CMA.(MD)No.515 of 2024

15.In the result, this Civil Miscellaneous Appeal is **partly allowed**. The quantum of compensation awarded by the Tribunal is modified as **Rs.29,66,000/-**. The 2nd respondent Insurance Company is directed to pay the above said modified amount together with interest at the rate of 7.5% p.a, from the date of petition till the date of deposit. On such deposit, the claimants are entitled to get their share as per apportionment of the Tribunal. The Court fee must be paid by the claimants for the enhanced amount. No costs.

26 /07/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal/
Principal District Judge,
Tirunelveli.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA.(MD)No.515 of 2024

G.ILANGOVAN, J

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CMA (MD) No. 515 of 2024

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