



C.M.A(MD)No.151 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **20.02.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)No.151 of 2020

1.Meenatchiamma
2.Murugesu Pillai
3.Krishnamoorthy

... Appellants

Vs.

1.Ebenezer
2.National Insurance Co. Ltd.,
Through its Divisional Manager,
Office at anguvila Building,
North Car Street,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 18.11.2019 made in MCOP No.38 of 2016 on the file of the Motor Accident Claims Tribunal/Special Sub Judge, Tirunelveli.



C.M.A(MD)No.151 of 2020

WEB COPY

For Appellant : Mr.V.Sasikumar
For Respondents : Mr.R.Rajamani for R2
No appearance for R1

JUDGMENT

[Judgment of the Court was delivered by **K.K.RAMAKRISHNAN, J.**]

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 18.11.2019, passed by the Motor Accidents Claims Tribunal, Special Sub Judge, Tirunelveli in M.C.O.P.No.38 of 2016.

2. By the impugned award, the Tribunal has awarded a sum of Rs. 27,58,000/- as compensation together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellants 1 and 2 for the death of their son Rajendra Prasad and to the third appellant, who is the brother of the deceased.



C.M.A(MD)No.151 of 2020

WEB COPY

3.This is a case of fatal accident. The case of the claimants is that on 05.09.2015 at 11.00 a.m, when the deceased was riding his motorcycle bearing Reg.No.TN-75-H-8708 at the Parvathipuram-Vetoornimadam main road near Danvanthiri Ayurvedha Medical Shop, Nagercoil, a tanker lorry bearing Reg.No.TN-74-V-1267 belonging to the first respondent insured with the second respondent, came from behind without sounding horn in a rash and negligent manner and hit the motorcycle from behind. In the impact, the deceased was thrown off and he fell down on the road and sustained serious injuries. Immediately, he was taken to the Asaripallam Hospital at Nagercoil. However, on the way, he succumbed to his injuries. In this regard, a criminal case in Cr.No. 106/2015 was registered against the driver of the tanker lorry. The parents and brother of the deceased filed the claim petition before the Tribunal. Though they claimed Rs.3,00,00,000/- as compensation, the Tribunal has awarded Rs. 27,58,000/- together with interest at 7.5% per annum, under the following heads:-

<i>Heads</i>	<i>Rs.</i>
Loss of dependency 28000x12x16x1/2	26,88,000/-
Parental Consortium to the claimants 1 & 2	40,000/-



C.M.A(MD)No.151 of 2020

WEB COPY

<i>Heads</i>	<i>Rs.</i>
Loss of Estate	15,000/-
Funeral Expenses	15,000/-
Total	27,58,000/-

Aggrieved over the inadequate compensation awarded in the above M.C.O.P.38 of 2016, the claimants have filed this appeal to enhance the compensation.

4.The learned counsel appearing for the appellants would contend that since the amount awarded by the Tribunal under meager in all the heads, the claimants are entitled for higher compensation. He would further contend that at the time of accident, the deceased was 31 years and the deceased was working as Insulation QC at Soudi Arabia and earned Rs.1,48,074/- per month, whereas, the Tribunal without considering the income of the deceased fixed a sum of Rs. 20,000/- per month as notional income, which is erroneous. Hence, the appellants seek for enhancement of compensation.

5.Per contra, the learned counsel appearing for the 2nd respondent Insurance Company submitted that the impugned award awarding the aforesaid



C.M.A(MD)No.151 of 2020

WEB COPY

compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

6.This Court carefully considered the submissions of the learned counsel for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

7.Hence, the issue to be decided in this appeal is whether appellants are entitled to get enhanced compensation.

8. According to the appellants/claimants, the deceased was earning a sum of 1700 USD/month by working as Insulation QC in Soudi Arabia. To prove the same, the claimants produced Employment Certificate (Ex.P.15) and Xerox Copies of the Bank Pass Book (Exs.P9 to 11). However, the Tribunal without considering the same, fixed the monthly notional income of the deceased as Rs. 20,000/-, which is erroneous. The employment certificate was produced along with the account details of the deceased and also flight ticket booked by the deceased and pass port of the deceased was produced. Ex.P.15 was issued by the



C.M.A(MD)No.151 of 2020

WEB COPY

Company General Manager of the company for Dafah Saudi Arabia Ltd. The said document proved that he was employed as DA/DC controller from 12.11.2013 to 04.09.2015. His passport also was produced and the same contained the travelling details of the deceased to the Saudi Arabia. The flight ticket was filed to show the journey under Ex.P12. The claimants pleaded that he earned more than Rs.1,48,074/- per month. The learned trial Judge has held that since the employment is contract in nature and the same is not permanent nature, he fixed the notional income of the deceased is Rs.20,000/-. In the considered opinion of this Court, the said finding is erroneous one and the deceased was continuously employed in the Saudi Arabia for number of years on the basis of the periodical renewal of agreement. The same was clearly proved by the pass port entry. Therefore, the learned Tribunal Judge committed error in not taking into consideration of the income of the deceased as mentioned in the salary certificate. This Court considered all the document and fixes the monthly salary of the deceased as Rs.48,000/-. Further, the deceased was 31 years at the time of the accident. Hence, the claimants are entitled to 40% towards future prospects and after deducting 1/2 for personal expenses and by applying multiplier '16', this Court awards Rs.64,51,200/- $(48000 + 19200 = 67200 - 33600(1/2) = 33600 \times 12 \times 16)$



C.M.A(MD)No.151 of 2020

WEB COPY

towards loss of income. Therefore, the amount of Rs.26,88,000/- awarded under the head of loss of income is enhanced to Rs.64,51,200/-. The amount awarded under the other heads and the rate of interest fixed by the Tribunal are not altered. Hence, the compensation awarded by the Tribunal to the appellants is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of income	26,88,000/-	64,51,200/-	enhanced
Loss of Love and affection	40,000/X3	1,20,000/-	enhanced
Loss of Estate	15,000/-	15,000/-	confirmed
Funeral Expenses	15,000/-	15,000/-	confirmed
Total	27,58,000/-	66,01,200/-	Enhanced

9. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellants 1 and 2/claimants 1 and 2, who are the parents of the deceased, are entitled to withdraw a sum of Rs.30,00,000/- each



C.M.A(MD)No.151 of 2020

WEB COPY

and the third appellant/third claimant, who is the brother of the deceased, is entitled to withdraw a sum of Rs.6,01,200/-. No costs.

[V.B.S.,J.] [K.K.R.K.,J.]
20.02.2024

skn

NCC : Yes/No

Index : Yes / No

Internet : Yes

To

- 1.The Special Sub Judge,
Motor Accident Claims Tribunal,
Tirunelveli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.151 of 2020

V.BHAVANI SUBBAROYAN, J.

and

K.K.RAMAKRISHNAN, J.

skn/sbn

JUDGMENT MADE IN
C.M.A(MD)No.151 of 2020

20.02.2024