



C.M.A(MD)No.581 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 25.07.2024

Pronounced on : 16.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD)No.581 of 2024

1.Mariyammal

2.Muruga Perumal

3.Thirumani

4.Pathanachi

5.Mariappan

6.Raja

7.Shanmugaraj

... Appellants / Petitioners

Vs.

1.Moses

2.The New India Assurances Company Limited,
Through its Branch Manager,
No.182/22/1,
S.N.High Road,
Tirunelveli.

... Respondents / Respondents



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PRAYER :-

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This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to allow this appeal, enhance the award amount in M.C.O.P.No. 03 of 2021 on the file of the Motor Accident Claims Tribunal / 3rd Additional District Judge, Tirunelveli, dated 08.07.2022.

For Appellant : Mr.T.Selvakumaran

For R2 : Mr.D.Sivaraman

JUDGMENT

This Civil Miscellaneous Appeal is filed to allow this appeal, enhance the award amount in M.C.O.P.No.03 of 2021 on the file of the Motor Accident Claims Tribunal / 3rd Additional District Judge, Tirunelveli, dated 08.07.2022.

2. The case of the prosecution is that on 09.03.2020 at about 6.30 p.m., the deceased was riding a motorcycle bearing registration number TN 96 6499 from south north direction on the Tirunelveli to Madurai road. When he has nearing the place of occurrence, a car bearing registration number TN 72 BB 0520 belongs to the first respondent in the main petition, came from North to



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South direction in a rash and negligent manner and hit the deceased. As a result of which, the deceased sustained grievous injuries. He was taken to Tirunelveli Medical College Hospital, but later died without responding to the treatment. A case was registered in Crime No.77 of 2020 against the first respondent vehicle driver.

3. The deceased was a native medical practitioner by profession and earning not less than Rs.25,000/- per month. He was aged about 64 years at the time of the occurrence. Claiming compensation amount of Rs.10 Lakhs, the petition was filed. That was resisted by the insurance company by filing a counter stating that, the deceased without minding the traffic on the main road, suddenly crossed the road and invited the accident. The relationship of the claimant and the deceased is also disputed, apart from other customary denials.

4. Regarding the first aspect of negligence, the Tribunal recorded a finding that it occurred due to the rash and negligent driving of the first respondent driver. Regarding the compensation amount, the notional income was fixed at Rs.8,850/-. The age was fixed at 66+ years, on the basis of the



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entry made in the driving licence. No future prospects was added. 1/4 share was deducted towards living expenses. Loss of dependency was fixed at Rs.4,10,400/- and other customary amounts were added and finally awarded a compensation of Rs.4,45,400/-. Challenging the same, this Civil Miscellaneous Appeal is filed by the claimants by stating that the compensation of the Tribunal is very meagre and does not satisfy the requirements of law which are settled now.

5. Learned counsel for the second respondent would submit that there is serious dispute with regard to the relationship of the claimant with the deceased. According to him, the third wife is the first claimant but the second wife is still alive. Considering the age of the deceased and as well as the job nature, the quantum fixed by the Tribunal requires no interference.

6. Per contra, learned counsel for the appellant would rely upon a judgment reported in **2019(1) TN MAC 54 (DB)** in the case of **Andal and two others Vs Avinav Kannan and another**, would submit that fixing of Rs.8,850/- as monthly income is very meagre and ought to have fixed the reasonable notional income at the rate of Rs.11,000/- by taking into account, the cost inflation ratio.



7. On the side of the second respondent a judgment reported in **2007 (1)**

TN MAC 385(SC) in the case of Smt.Manjuri Bera Vs Oriental Insurance Company Ltd and another, which regard to the compensation claimed by the third wife.

8. Such a ground can be raised by one of the claimant and certainly not by the insurance company. However, since the issue has been raised by the respondent herein, it requires answer. In view of the judgment of the Hon'ble Supreme Court, reported in **2007 (1) TN MAC 385(SC) in the case of Smt.Manjuri Bera Vs Oriental Insurance Company Ltd and another**, a distinction has been drawn between the right to apply for compensation and entitlement to compensation. We need not enter into the controversy. In the claim application the first claimant Mariyammal is shown as wife and appellants 2 to 7 are shows as children. But there is no evidence on record to show that the first respondent is the third wife and Natarajan married the first petitioner during the life time of the second wife. There is no finding by the Tribunal with regard to that aspect. It was not the case of the insurance company that the first petitioner married the deceased during the lifetime of the second wife. There is no such evidence and we need not enter into the



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controversy. Regarding the fixation of notional income, as mentioned above, the Tribunal has taken Rs.285/- per day on the basis of the cost of inflation index on the date of occurrence ie., 09.03.2020. The cost of inflation index ought to have been on the basis of fixing the notional income.

9. The judgment of the Hon'ble Division Bench of this Court reported in **2019(1) TN MAC 54 (DB)** in the case of **Andal and two others Vs Avinav Kannan and another (stated supra)**, has made exercise of fixing notional income on the basis of the inflation index. For a vegetable vendor, the Hon'ble Supreme Court has fixed Rs.6,500/- as notional income, for the accident took place in the year 2008. That was taken as a basis for calculating the notional income of the claimants in this matter, the deceased who was a meat chopper by profession. Here there is no evidence on record to show that the deceased was a native medical practitioner and earning Rs.25,000/- per month. In the absence of any such documentary evidence, we can take Rs.10,000/- as notional income of the deceased. Regarding the age of the deceased which was fixed at Rs.66+ years, no future prospects was added by the Tribunal, because of the dictum laid by the Hon'ble Supreme Court of India in **National Insurance Co. vs Pranay sethi and others** reported in



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2017 (2) TNMAC 601. Therefore, Notional income of the deceased is fixed as Rs.10,000/- and 1/5 share must be deducted towards personal expenses, which comes to Rs.8,000/-. Since the deceased is aged about nearly 67 years, multiplier 5 is adopted. Therefore, Loss of Dependency is fixed at Rs. 4,80,000 /- (8000 x 12 x 5). The other heads of compensation are reasonable. Therefore, the compensation is recalculated as below:

Heads of Compensation	Award
Loss of Dependency	Rs. 4,80,000/-
Loss of Estate	Rs. 10,000/-
Funeral expenses	Rs. 15,000/-
Transport expenses	Rs. 10,000/-
Total	Rs. 5,15,000/-

10. The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified as follows:

(i) The quantum of compensation awarded by the Tribunal is increased to ***Rs.5,15,000/- (Rupees Five Lakhs Fifteen Thousand only)*** with interest at the rate of 7.5% per annum.



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(ii) The second respondent is directed to deposit the award amount together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No. 03 of 2021 on the file of the Motor Accident Claims Tribunal / 3rd Additional District Judge, Tirunelveli, within a period of two months from the date of receipt of a copy of this judgment, if not already deposited.

(iii) On such deposit being made, the the 1st claimant / 1st petitioner is entitled for a share of **Rs.2,15,000/- (Rupees Two Lakhs Fifteen Thousand only)** and the claimants 2 to 7 are entitled for **Rs.50,000/- each (Rupees Fifty Thousand only)** with interest at the rate of 7.5% per annum. The claimants are at liberty to withdraw the compensation amount, after following the due process of law, less any amount already received by them.

(iv) No costs.

16.08.2024

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

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To

- 1.The Motor Accident Claims Tribunal / 3rd Additional District Judge,
Tirunelveli
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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Pre-Delivery Judgment made in
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