BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE L.VICTORIA GOWRI

C.M.A.(MD) No.852 of 2022
and
C.M.P.(MD) Nos.8081 of 2022 and 10847 of 2022

M/s.The New India Assurance Company Ltd.,
Rep., through the Divisional Manager,
Divisional Office at CMTS Bhavan,
70 Feet Road, Ellis Nagar,
Madurai-625 010. ... Appellant/ Respondent No.2

Vs.

1.U.Nagan
2.N.Amirthavalli ... Respondents 1 & 2/ Petitioners 1 & 2

3.P.Murugan ... 3rd Respondent/ 1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 30.11.2021 made in M.C.O.P.No.346 of 2019 on the file of the Motor Accident Claims Tribunal, Special District Judge (MACT), Madurai.

For Appellant	:	Mr.D.Sivaraman
For R1 & R2	:	Ms.B.Deepa
For R3	:	No appearance

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This appeal is directed against an award passed by the Motor Accident Claims Tribunal, Madurai in M.C.O.P.No.346 of 2019 by the Insurance Company of the offending vehicle.

2. On 24.04.2018, in a collusion involving two motorcycles, certain Saravanan, a rider of one of the motorcycles died on the spot. He was aged 24 years at the relevant time and was an Engineering Graduate. He was stated to be working as Site Supervisor under P.W.3, who claims himself to be a civil contractor and running his business under the name and style of

"Jayam Associates". According to P.W.3, the victim was earning a sum of Rs.34,500/-, which includes his allowances and emoluments. The Tribunal reckoned the income of the victim at Rs.34,500/- monthly, applied 18 as the multiplier, deducted 10% of the aggregate towards income tax and reduced the sum arrived by half and arrived at the loss of dependency at Rs.46,94,760/-. Including all other conventional heads of compensation, it arrived at total compensation of Rs.48,09,760/-. The breakup is as below:

Sl.No.	**Description**	**Amount warded by the Tribunal**
1	Loss of Income (Rs.2,60,820 x18)	Rs.46,94,760/-
2	Loss of parental consortium	Rs. 80,000/-
3	Funeral expenses	Rs. 15,000/-
4	Loss of estate	Rs. 15,000/-
5	Transport expenses	Rs. 5,000/-
Total		**Rs.48,09,760/-**

3. Learned counsel for the appellant made the following submissions:

(a) That though the victim was an Engineering Graduate, it is extremely suspicious whether he was actually working under P.W.3, since P.W.1, father of the victim who preferred the FIR, has stated that at the relevant time, he was a Mason and his son was working under him. This statement is seen recorded in Ext.P.1-FIR and it is the earliest of statements;

(b) Turning to Ext.P.8, salary certificate of the victim, which P.W.3 has produced, it includes petrol allowances and other miscellaneous allowances. The employer had not produced any other supporting documents to corroborate his statement made through Ext.P.8; and

(c) That the victim was not wearing helmet at the relevant time and owing by the testimony of P.W.2, eyewitness to the accident and Ext.P.3, xerox copy of the postmortem certificate, the victim had died due to head injury. The Tribunal had not made any provision for the neglect of the victim to wear helmet at the time of the accident.

4. Learned counsel for the claimants made her submissions more in tune with the line of reasoning of the Tribunal. In particular, the learned counsel

submitted that Ext.P.8, salary certificate cannot be suspected, especially when the employer himself has entered the box to make the statement.

5. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the claimants and the rival submissions are carefully weighed.

6. There are two aspects which require the consideration of this Court:

a) The monthly income, the victim had earned or capable of earning; and

b) Whether any deduction be made towards the neglect of the victim to wear helmet.

7. So far as the second of the two questions is concerned, this Court has little hesitation in fixing some responsibility on the victim in not wearing helmet at the relevant time. It is an undisputed fact that the victim had died on head injuries. This Court deems it appropriate that 10% be deducted towards the neglect of the victim to wear helmet.

8. The larger question, however, is what would be the appropriate monthly income, which the victim had earned or could have earned. This brings to focus the reliability of Ext.P.8, salary certificate. And this has to be weighed and correlated in the context of the recorded statement of P.W.1 in Ext.P.1-FIR and also the quality of the testimony of P.W.3.

9. Turning to the statement attributed to P.W.1, which finds some expression in Ext.P.1-FIR goes, it is true, P.W.1 has stated that he is a Mason and that his son was a Site Supervisor. This reconciles with the statement of P.W.3. It should not be forgotten that the victim was an Engineering Graduate, a fact which the Insurance Company does not dispute in view of the certificates of education which the claimants have produced. It is true that the quality of evidence of P.W.3 taken as a whole appears bit exaggerated in places, but it cannot be wholly dismissed. After all, the victim's father was a Mason himself and P.W.3 claims that he is a civil contractor. Therefore, the preponderating probability is that the victim was working under P.W.3. If Ext.P.8 is scanned meticulously, the fuel allowance of Rs.3,000/- and miscellaneous allowance of Rs.2,000/- can readily be deducted. According to

P.W.3, he was not maintaining any books of accounts or registers for his business, which disables this Court from ascertaining the truth what he says. If Ext.P.8 is to be reckoned as a basis, then after giving due allowances what this Court believes as exaggeration, then fixing the monthly income of the victim at Rs.27,000/- would be just and appropriate. It is underscored that this Court has arrived at this figure based on the oral and documentary evidence on record and has not chosen to use a random figure in determining any notional income for an Engineering Graduate.

10. Rs.27,000/- a month, deducting 10% towards income tax and adding 40% towards future prospects of increase in income of the victim, reducing the sum arrived by half (with the other half representing the expenses of the victim), and applying 18 as a multiplier, the total loss of dependency would be Rs.36,74,160/- [27000 x 12 = 3,24,000 – 32,400 (10% of 3,24,000) = 2,91,600 + 1,16,640 (40% of 2,91,600) = 4,08,240 / 2 = 2,04,120 x 18 = 36,74,160]. If 10% is deducted towards contributory negligence of the victim, then the net value of the loss of dependency would be Rs.33,06,744/-. [36,74,160 – 3,67,416 (10% of 36,74,160) = 33,06,744] This is rounded off

to Rs.33,06,750/-. So far as the heads of conventional damages are concerned, this Court finds them just fair and reasonable and does not want to interfere with the same. Now the award will look as below:

Sl. No.	Description	Amount warded by the Tribunal	Amount awarded by this Court	Confirmed or reduced
1	Loss of Income	Rs.46,94,760/-	Rs.33,06,750/-	Reduced
2	Loss of parental consortium	Rs. 80,000/-	Rs. 80,000/-	Confirmed
3	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4	Loss of estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Transport expenses	Rs. 5,000/-	Rs. 5,000/-	Confirmed
6	Total Compensation awarded	Rs.48,09,760/-	Rs.34,21,750/-	Reduced by Rs.13,88,010/-

11. To conclude, this appeal is partially allowed and the compensation awarded by the Tribunal is reduced from Rs.48,09,760/- to Rs.34,21,750/- which the Insurance Company is directed to pay with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

12. Learned counsel for the appellant submitted that the entire compensation amount has been deposited before the Tribunal, which now implies that the

Insurance Company would be entitled to any sum in excess of the sum herein awarded.

13. Turning to apportionment of compensation between the claimants, the reduced value of compensation will be apportioned in the same ratio which the Tribunal has apportioned the compensation.

14. Learned counsel for the claimants makes a statement that one of the claimants is now being treated for cancer. Given the circumstances, the claimants are entitled to withdraw the entire compensation. The Tribunal is directed to refund the excess amount, if any, to the appellant / Transport Corporation along with proportionate interest. No costs. Consequently, connected miscellaneous petitions are closed.

(N.S.S., J.) **(L.V.G., J.)**
21.06.2024

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

ABR

N. SESHASAYEE, J.
and
L.VICTORIA GOWRI, J.

ABR

To

1.The Motor Accident Claims Tribunal,
Special District Judge (MACT), Madurai.

2.VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD) No.852 of 2022

21.06.2024