



WEB COPY



C.M.A(MD)No.914 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.07.2024

Pronounced on : 28.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD)No.914 of 2024

1.Murugan

2.Minor Vaithegi

Petitioner No. 2 represented through her father
and next friend, the 1st petitioner herein

... Appellants / Petitioners

Vs.

1.Ravichandran

2.The New India Assurance Company Limited,
through its Bank Manager,
Office at Number 116A,
GST Road, Chengalpat.

3.Senthamarai Transport,
having office at No.2, GST Road,
Vandalur, Chennai.

4.Bajaj Alliance General Insurance Company Limited,
No.38, Kamaraj Street, Rajaji Road,
West Tambaram, Chennai.

5.Varadhan



C.M.A(MD)No.914 of 2024

6.Oriental Insurance Company Limited,
Chengalpat.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to enhance the award passed by the Motor Accident Claims Tribunal cum Principal District Court, Tirunelveli under Motor Vehicles Act dated 30.11.2018 in M.C.O.P.No.1415 of 2017.

For Appellant : Mr.K.Anand

For R1, R3 & R5 : Ex parte

For R2 : Mr.I.Robert Chandrakumar

For R4 : Mr.K.R.Shivashankari

For R6 : Mr.A.Ilango

JUDGMENT

This Civil Miscellaneous Appeal is filed to enhance the award passed by the Motor Accident Claims Tribunal cum Principal District Court, Tirunelveli, under Motor Vehicles Act dated 30.11.2018 in M.C.O.P.No.1415 of 2017.



C.M.A(MD)No.914 of 2024

2. The case of the prosecution is that on 09.03.2011 at about 5.30 p.m., a TATA Magic van belongs to the 5th respondent was brought for registration to the RTO office, Chengalpat. Since the work was not completed on that day, it was brought back to Madhuravoil. At that time, a lorry bearing registration number TN 21 x 1748 which belongs to the first respondent in the main petition was driven by its driver in a rash and negligent manner and hit the TATA Magic Van, in which the deceased was travelling. The TATA Magic Van hit another bus bearing registration number TN 22 AJ 1487 which was waiting for the signal, belongs to the 3rd respondent in the main petition. The driver of the van also died on the spot. A case in Crime No.140 of 2011 was registered against the driver of the lorry before the D3, Guduvancheri Police Station. The deceased Kanagaraj was aged about 21 years at the time of the occurrence and he is an expert in mechanical section which belongs to the 5th respondent company namely one Varathan and was paid a monthly salary of Rs.10,020/-. The dependants filed claiming petition, claiming compensation amount of Rs.18 Lakhs.

3. The second respondent in the main petition filed counter stating that the occurrence took place due to the rash and negligent driving on the part of



C.M.A(MD)No.914 of 2024

the fifth respondent, the unregistered TATA Magic Van and the third respondent passenger bus driver, the accident has happened.

4.The Tribunal at the first aspect of negligence recorded a finding that the first respondent vehicle driver was responsible for the accident. Regarding the compensation, the monthly income of the deceased was fixed at Rs.7,500/-. Notionally 40% was added towards future prospects. Rs.10,500/- was fixed at monthly income. Half of the amount was deducted towards the living and personal expenses. Considering the age of the deceased, multiplier 18 was adopted. Loss of dependency was fixed at Rs.11,34,000/-. To that other customary amounts were added and finally the compensation was fixed at Rs.11,99,000/-. Against which this appeal is preferred by the claimants, aggrieved over the quantum fixed by the Tribunal. There was no cross appeal by the insurance company.

5. Learned counsel for the appellant would submit that considering the age of the deceased, fixing Rs.7,500/- per month is very low and it must be reasonably fixed and enhanced.



C.M.A(MD)No.914 of 2024

WEB COPY

6. Learned counsel for the second respondent would submit that the amount was fixed by the Tribunal is reasonable and requires no interference.

7. Since there was no cross appeal or regular appeal by the insurance company regarding the negligence aspect, no discussion is required and that part of the finding of the Tribunal that the occurrence took place because of the rash and negligent driving on the part of the first respondent requires no interference and it is confirmed.

8. Regarding the second aspect of compensation only, as mentioned above, grievance is expressed by the appellant. It is the claim of the claimants that the deceased was working as mechanical expert in fifth respondent company and earning Rs.10,020/- per month. To show the date of birth, the Transfer Certificate of the deceased was marked as Ex.P8 which shows the date of birth as 17.04.1989. So, on the date of occurrence, he was aged about 22 years. P.W.3 was examined to show the job and income salary of the deceased and Ex.P9 was marked on the side of the claimants. From his evidence, it is seen that the deceased was working as an expert namely



C.M.A(MD)No.914 of 2024

Assistant Technician and his monthly salary was fixed as Rs.10,020/- as noted above. But the Tribunal went on to observe that there is no documentary evidence to show that he was a permanent employee. On that account, the evidence of P.W.3 and Ex.P9 was discarded.

9. This Court is unable to see any reason for rejecting the evidence of P.W.3 and document Ex.P9. Ex.P9 which was also supported by the oral evidence of P.W.3. Simply because P.W.3 states that he was not aware whether the deceased was a permanent employee or not, is insufficient to reject the evidence in its entirety. When there is sufficient evidence to show the income and job nature, without any proper reason that could not be rejected. So the finding of the trial Court that the notional income ought to have been fixed is not proper and the finding is set aside. Accepting Ex.P9, the monthly salary of the deceased is taken as Rs.10,020/-. To that 40% of the Future Prospects was added and it would come to Rs.14,000/- . By deducting 1/2 of the share towards the personal expenses, Rs.7,000/- is taken. By adopting multiplier 18, the loss of dependency is calculated as Rs.15,12,000/- (7000 x 12 x 18). Other customary amounts namely funeral expenses, transport charges are reasonably fixed. The first claimant is the father of the



C.M.A(MD)No.914 of 2024

deceased. So he is entitled for Rs.40,000/- towards filial consortium. Second respondent is not entitled for any compensation on that account. Loss of estate was ordered to be added. So it is fixed at 15,000/-. Finally, the award of compensation is fixed as follows:

Particulars	Amounts (Rs.)
Loss of income	Rs.15,12,000/-
Funeral Expenditure	Rs. 15,000/-
Transport expenditure	Rs. 10,000/-
Filial Consortium	Rs. 40,000/-
Loss of Estate	Rs. 15,000/-
Total	Rs.15,82,000/-

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 enhanced to ***Rs.15,82,000/- (Rupees Fifteen Lakhs Eighty Two Thousand only)*** with interest at the rate of 7.5% per annum.

(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.1415



C.M.A(MD)No.914 of 2024

of 2017 before the Motor Accident Claims Tribunal cum Principal District Court, 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 1st claimant / 1st appellant is entitled to withdraw the entire amount with interest at the rate of 7.5% per annum, after following the due process of law, less any amount already received by him.

(iv) No costs.

28.08.2024

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

pnn

To

- 1.The Motor Accident Claims Tribunal cum Principal District Court,
Tirunelveli.
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.

8/9



WEB COPY



C.M.A(MD)No.914 of 2024

G.ILANGO VAN, J.

pnn

Pre-Delivery Judgment made in

C.M.A(MD)No.914 of 2024

28.08.2024