



C.M.A.(MD)No.368 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.368 of 2014

1.Padma

2.Thangappan

3.Ponselvi

4.Viji Priya

... Appellants/ Petitioners

Vs.

1.Kalairaju

2.The Branch Manager

Sri Ram General Insurance Company Limited,
Seethapuram, Jaipur, Rajasthan.

3.Manimaran

(Respondents 1 & 3 Remained Exparte
Before the Tribunal. Hence Notice to the R1
& 3 may be dispensed with)

4. United India Insurance Company Limited,

114/120, Super Bazaar, Trichy. ... Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 23.02.2012 made in M.C.O.P.No.489 of 2011 on the file of the Motor Accident Claims Tribunal - Additional District Court – Fast Track Court No.II), Trichirappalli.



C.M.A.(MD)No.368 of 2014

WEB COPY

For Appellants : Mr.Jeril Mathew
for M/s.Ajmal Associates
For R4 : Mr.C.Jawahar Ravindran
For R2 : Mr.N.Shylappakalyan
For R1 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.489 of 2011 on the file of the Motor Accident Claims Tribunal - Additional District Court – Fast Track Court No.II), Trichirappalli, wherein the appellants / petitioners herein have filed the claim petition for a sum of Rs.30,00,000/-. The Tribunal has awarded a sum of Rs.6,94,000/- along with interest @ 7.5% per annum as compensation.

2. Being aggrieved by the above said order of the Tribunal, the petitioners have filed this Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.



C.M.A.(MD)No.368 of 2014

WEB COPY

4. The brief facts of the petition averments are as follows:

On 16.10.2010, at about 3.45 p.m., when the deceased – Visakan was proceeding in a motorcycle bearing Registration No.TN-45-A-8310 from Trichy to Srirangam, a car bearing Registration No. TN-37-AE-1748, belonged to the first respondent, came in the opposite direction in a rash and negligent manner and dashed against the motorcycle. Due to which, the deceased – Visakan sustained injuries all over the body and was taken to Government Hospital, Trichy, where he died on the same day at about 04.45 pm. At the time of accident, the deceased was aged about 28 years and he studied M.C.A and was earning Rs.5,000/- per month. The accident took place due to the negligence on the part of the first respondent's driver. The first respondent's vehicle was insured with the second respondent. Hence the petitioners, who are the legal heirs of the deceased, have filed the claim petition for claiming compensation for a sum of Rs.30,00,000/-.

5. The brief facts of counter filed by the second respondent are as follows:



C.M.A.(MD)No.368 of 2014

WEB COPY

The Petition is not maintainable either in law or facts and the averments made in the Petition are all denied. The accident had not taken place as alleged in the Petition. The rider of the motorcycle only liable for the accident. This respondent denied the age, income and occupation of the deceased. Hence, this Petition is liable to be dismissed.

6. The brief facts of counter filed by the third respondent are as follows:

The Petition is not maintainable. The accident did not take place due to the negligence on the part of the third respondent's driver and the accident took place only due to the negligence on the part of the driver of the first respondent. F.I.R was also registered as against the first respondent, thereby, this respondent is not liable to pay compensation to the Petitioners.

7. The brief facts of counter filed by the fourth respondent are as follows:



C.M.A.(MD)No.368 of 2014

WEB COPY

This Petition is not maintainable. This respondent denied the age, income and occupation of the deceased. The accident took place due to the rash and negligent driving of the driver of the first respondent. Hence, this Petition is liable to be dismissed.

8. In order to prove the case of the petitioners, the first petitioner examined himself as P.W.1 and two other witnesses were examined as P.W.2 & P.W.3 and 17 documents were marked as Exs.P.1 to Ex.P.17 and on the side of the respondents, one witness was examined as R.W.1 and 3 documents were marked as Exs.R1 to Ex.R3.

9. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.6,94,000/- towards compensation with interest of 7.5 % pa.

10. As against the award passed by the Tribunal, the claimants have preferred this appeal for enhancing the compensation amount, on various grounds.



C.M.A.(MD)No.368 of 2014

WEB COPY

11. The learned counsel appearing for appellants / claimants would contend that the accident took place due to the negligence on the part of the driver of the first respondent. The deceased was aged about 28 years on the date of accident and he was earning a sum of Rs.2,00,000/- per year. In order to prove the salary of the deceased, they have examined P.W.3, who is the Manager of the Company, where the deceased was working and he categorically deposed that the deceased was earning Rs.9,000/- per month and to that effect, he has also produced Ex.P10- salary certificate, But, However, the Tribunal disbelieved the evidence of the Petitioners' side. Therefore, the award passed by the Tribunal is liable to be enhanced.

12. The learned counsel for the second respondent / Insurance Company would contend that the Tribunal after on consideration of the evidence on either side, correctly calculated the monthly income of the deceased as Rs.6,000/-. However, the Tribunal deducted 1/3rd of the amount for personal expenses of the deceased, instead of deducting 50%.



C.M.A.(MD)No.368 of 2014

In all other aspects, the Tribunal awarded a just and fair compensation.

Therefore, the order of the Tribunal is correct and the present Appeal is liable to be dismissed.

13. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i)whether the appeal is liable to be allowed or not?

14. The Tribunal had fastened the negligence on the part of the driver of the first respondent and there is no appeal preferred by the respondents, in the aspect of negligence and thereby, the findings of the Tribunal was accepted by the parties. Therefore, there is no dispute with regard to the negligence. The appellants have preferred this Appeal mainly on the ground of enhancement of the compensation. The Tribunal fixed the monthly income as Rs.6,000/- and adopted multiplier of '13', by taking into consideration of the age of the mother of the deceased. It is settled law that the age of mother of the deceased is irrelevant and the age of the deceased has to be taken into account for awarding compensation.



C.M.A.(MD)No.368 of 2014

But, the Tribunal erroneously taking the age of the mother of the deceased for adopting multiplier. In order to prove the salary of the deceased, the appellants / petitioners have examined P.W.3 and marked Ex.P10. On careful perusal of Ex.P10-salary certificate and evidence of P.W.3, it evidenced that the deceased was earning Rs.9,000/- per month. In order to rebut the evidence of petitioners' side, no contra evidence was adduced. In the absence of contra evidence, the submission of the petitioners is reliable and acceptable. As per Ex.P10, the deceased was earning Rs.9,000/- per month. Hence, this Court fixed the monthly income of the deceased as Rs.9,000/-. The Tribunal has failed to add future prospects, as per the Judgment of the Pranay Sethi's Case, 40% (Rs.3,600/-) has to be added as future prospects and thereby, the monthly income of the deceased is fixed at Rs.12,600/- (Rs.9,000/- + Rs.3,600/-). Considering the fact that the deceased was a Bachelor, 50% (Rs.6,300/-) has to be deducted as personal expenses of the deceased.

15. The age of the deceased was mentioned as 28 years and the same was not disputed by the respondents. Considering the age of the deceased, multiplier '17' has to be adopted and thereby, the appellants /



C.M.A.(MD)No.368 of 2014

claimants are entitled to Rs.12,85,200/- (Rs.6,300/- X 12 X17) towards loss of income. Further the appellants / claimants are entitled for a sum of Rs.18,000/- towards funeral expenses, Rs.18,000/- towards loss of estate and Rs.48,000/- towards consortium. In total, the petitioners / appellants are entitled to Rs.13,69,200/- and the same is rounded off to Rs.13,70,000/-. The appellants / petitioners are entitled for compensation as follows:

1.	Loss of income	Rs. 12,85,200/-
2.	Funeral Expenses	Rs. 18,000/-
3.	Loss of estate	Rs. 18,000/-
4.	Consortium	Rs. 48,000/-
	Total	Rs. 13,69,200/- the same is rounded off to Rs. 13,70,000/-

16. The Tribunal has failed to consider the evidence of the P.W.3 and Ex.P10 and also failed to consider multiplier for the age of the deceased and thereby, the award passed by the Tribunal is liable to be modified as above.



C.M.A.(MD)No.368 of 2014

WEB COPY

17. In fine, the appellants / petitioners are entitled to a sum of Rs.13,70,000/- towards compensation with interest at the rate of 7.5% pa. from the date of claim petition till the date of realization. The first appellant, who is the mother of the deceased, is entitled to Rs.5,00,000/- along with proportionate interest and costs, the second appellant, who is the father of the deceased, is entitled to Rs.3,00,000/- along with proportionate interest and costs, the third and fourth appellants, who are the sisters of the deceased, are entitled to Rs.2,85,000/- each along with proportionate interest and costs.

18. In the result this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.489 of 2011 is modified to the effect that the petitioners / appellants are entitled for a sum of Rs.13,70,000/- as compensation with interest at the rate of 7.5% pa. The second respondent /Insurance Company is directed to deposit the entire award amount with interest, from the date of claim petition till the date of realization with cost, within period of two months from the date of this judgment, after deducting the amount already deposited, if any. On such deposit being made, the petitioners / appellants are permitted to



C.M.A.(MD)No.368 of 2014

withdraw their share amount as apportioned by this Court, by filing application before the Tribunal.

19. The claimants / appellants are directed to pay the proportionate court fee for the modified enhanced award amount.

No costs.

01.02.2024

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

To:

1.The Motor Accident Claims Tribunal -
Additional District Court –
Fast Track Court No.II),
Trichirappalli. .

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.368 of 2014

P. DHANABAL,J.

LS

C.M.A.(MD)No.368 of 2014

01.02.2024