



C.M.A.(MD).No.1272 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1272 of 2016

1. Thangam
2. Minor. Saraswathy
3. Minor Kuruvamma
4. Minor Keerthy

Chinnaiyan (died)

5. Sakunthala

... Appellants/Petitioners

-vs-

1. D.Vijay

2. The Oriental Insurance Company Limited,
No.4, Bharadhidasan Salai,
Cantonment,
Tiruchy -1.

... Respondents 1 and 2/Respondents

3. Kumar
4. Senthil
5. Vimala

.... Respondents 3 to 5/Petitioners 7 to 9

(The petition is dismissed in respect of
respondents 3 to 5 are given up)



C.M.A.(MD).No.1272 of 2016

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to enhance the award passed in M.C.O.P.No.2860 of 2002, dated 24.02.2016 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Tiruchirappalli.

For Appellants : Mrs.S.Sureka
for Mr.R.Venkatesan

For R1 : Mr.C.Susi Kumar
For R2 : Mr.C.Jawahar Ravindran
For R3 to R5 : Given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants as against the order passed in M.C.O.P.No.2860 of 2002, dated 24.02.2016 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Tiruchirappalli, wherein, the appellants herein have filed the claim petition, claiming compensation for the death of one Sekar, who died in the road accident.

2. The Tribunal has awarded a sum of Rs.3,38,800/- (Rupees Three Lakhs Thirty Eight Thousand and Eight Hundred only) along with interest at



C.M.A.(MD).No.1272 of 2016

the rate of 7.5% p.a., towards compensation. As against the award passed by the Tribunal, the present appeal has been preferred by the appellants/petitioners for enhancement of compensation.

3. According to the appellants/petitioners, the deceased is a driver who is the husband of the 1st petitioner, father of the petitioners 2 to 4. The Petitioners 5 and 6 are parents of the deceased and the petitioners 7 to 9 are brothers and sisters of the deceased. On.27.04.2000, at about 12.30 hours the first petitioner's husband Sekar and his friend were proceeding in their bicycle from Karumandapam to Ramji Nagar, on the Trichy to Dindigul Road. At that time, a Lorry bearing Registration No. TN-Q-5191, belonging to the first respondent and insured with the second respondent, came from their opposite side, driven in a rash and negligent manner and dashed against the cycle and thereby caused injuries to the said Sekar and thereafter he died on the same day. The deceased was aged about 32 years on the date of accident and he was earning a sum of Rs.4,000/- (Rupees Four Thousand only) per month. The petitioners are solely depending on the income of the deceased. Hence they filed the petition, claiming a compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only).



C.M.A.(MD).No.1272 of 2016

WEB COPY

4. The brief averments in the counter filed by the first respondent are as follows:

The first respondent denied the age, income and occupation of the deceased. The first respondent's vehicle was insured with the second respondent and thereby the second respondent is liable to pay the compensation to the petitioners.

5. According to the second respondent, the accident took place due to the rash and negligence on the part of the rider of the bicycle and not on the part of the first respondent's driver. The respondent denied the age, income and occupation of the deceased. Therefore, the second respondent is not liable to pay compensation to the petitioners.

6. Before the Tribunal, in order to prove the case of the petitioners, the petitioners have examined P.W.1 and P.W.2 and marked Exs.P.1 to P.7. On the side of the respondents, no witnesses were examined and no documents were marked.



C.M.A.(MD).No.1272 of 2016

WEB COPY

7. After evaluating the oral and documentary evidence adduced on the side of the petitioners, the Tribunal has awarded a sum of Rs.3,38,800/- (Rupees Three Lakhs Thirty Eight Thousand and Eight Hundred only) towards compensation along with interest at the rate of 7.5% per annum from the date of the petition till the date of realization and excluded period of default from 19.10.2005 to 28.04.2011. Aggrieved over the order of the Tribunal, the appellants/petitioners have filed the present appeal for enhancement of compensation.

8. The learned counsel appearing for the appellants would contend that the deceased was earning a sum of Rs.4,200/- (Rupees Four Thousand and Two Hundred only) per month by supplying Milk and in the petition it is wrongly mentioned as he was earning Rs.1,400/- (Rupees One Thousand and Four Hundred only). The Tribunal has taken the monthly income of the deceased as Rs.2,000/- and the same is very meager amount and the Tribunal has also failed to award the amount under other heads. Therefore, the award passed by the Tribunal is to be enhanced by allowing this appeal.



C.M.A.(MD).No.1272 of 2016

WEB COPY

9. The learned counsel appearing for the second respondent would contend that the petitioner has not produced any documents to prove the income of the deceased. The Tribunal based on the pleadings and evidence taken a sum of Rs.2,000/-(Rupees Two Thousand only) per month as income and awarded a just and fair compensation. Therefore, the order passed by the Tribunal is liable to be confirmed.

10. This Court after hearing learned counsel appearing on either side and perusing the documents, including the order of the Tribunal, frames the following point for determination in this appeal:

i. Whether the appeal is liable to be allowed or not?

11. In this case, there is no dispute with regard to the negligence on the part of the driver of the first respondent. The Tribunal after considering the evidences adduced by the parties, fastened the liability as against the driver of the first respondent and the second respondent did not file any appeal or counter claim. Since the first respondent vehicle was insured with the second respondent, the second respondent was directed to pay the award amount. The



C.M.A.(MD).No.1272 of 2016

appeal is filed only as against the quantum of the award amount.

12. According to the appellants/petitioners, the deceased was earning a sum of Rs.4,200/- (Rupees Four Thousand and Two Hundred only) per month. Due to typographical error, it is stated in the claim petition that he was earning a sum of Rs.1,400/- per month. To prove the income of the deceased, no documents were filed by the petitioners. However, the Tribunal had taken a sum of Rs.2,000/- per month as income. But the Tribunal failed to add future prospectus of the deceased. Therefore, the award passed by the Tribunal is liable to be modified.

13. This Court considering the date of accident and nature of work of the deceased fixed a sum of Rs.3,000/- per month including the future prospectus. Considering the dependents of the deceased 1/5 of the income has to be deducted towards the personal expenses of the deceased, thereby annual income is fixed at Rs.28,000/- There is no dispute regarding the age of the deceased. According to the petitioners, the deceased was aged about 32 years at the time of accident. Therefore, the age of the deceased is taken as 32 years. Considering the age of the deceased, multiplier '16' is adopted and thereby the loss of income would come to Rs.4,60,000/- (Rupees Four Lakhs



C.M.A.(MD).No.1272 of 2016

Sixty Thousand only).

14. Further the petitioners are entitled to a sum of Rs.40,000/- towards loss of consortium and loss of love and affection, a sum of Rs.15,000/- is awarded towards loss of estate, a sum of Rs.15,000/- is awarded towards funeral expenses.

15. In view of the above said discussion, the appellants/petitioners are entitled to the award amount as follows:

Sl.No.	Descriptions	Amount
1.	Loss of income	Rs.4,60,000/-
2.	Loss of Consortium and Loss of Love and Affection	Rs. 40,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
	Total	Rs.5,30,000/-

In total, the appellants/petitioners are entitled for Rs.5,30,000/- (Rupees Five Lakhs and Thirty thousand only) towards compensation. The respondents 3 to 5 are not dependents of the deceased and the petition is dismissed as against



C.M.A.(MD).No.1272 of 2016

the respondents 3 to 5.

16. In the result, this Civil Miscellaneous Appeal stands allowed and the order passed by the Motor Accidents Claims Tribunal, Principal District Court, Tiruchirapalli in M.C.O.P.No.2860 of 2002, dated 24.02.2016 is hereby set aside and the claim petition is partly allowed. The petitioners are entitled to a sum of Rs.5,30,000/- towards compensation and the second respondent is directed to pay the said amount along with interest at the rate of 7.5% from the date of petition till the date of realization, by excluding period of default from 19.10.2005 to 28.04.2011. The second respondent/ Insurance Company is directed to deposit the entire award amount within a period of two months from the date of this order. The 1st appellant/1st petitioner is entitled to a sum of Rs.1,40,000/- (Rupees One Lakh Forty Thousand only) with proportionate interest and costs, the appellants 2 to 4 are entitled to a sum of Rs.1,20,000/- each with proportionate interest and costs and the 5th petitioner is entitled to a sum of Rs.30,000/- (Rupees Thirty Thousand only) with proportionate interest and costs. On deposit of the said amount by the second respondent, the petitioners 1 to 5 are at liberty to withdraw the same by filing appropriate application before the Tribunal. In respect of the minor claimants/appellants 2 to 4, the amount shall be deposited in a Nationalized



C.M.A.(MD).No.1272 of 2016

WEB COPY

Bank till they attain majority or 3 years whichever is earlier and the guardian of the minor claimant is permitted to withdraw the interest once in three months. The petition is dismissed as against the respondents 3 to 5. There shall be no order as to costs.

21.02.2024

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

1. The Motor Accidents Claims Tribunal,
Principal District Judge,
Tiruchirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.1272 of 2016

P.DHANABAL,J.

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C.M.A(MD)No.1272 of 2016

21.02.2024