



WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 04.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A(MD)No.1278 of 2024

and

C.M.P(MD)No.13676 of 2024

M/s.Cholamandalam MS General Insurance Company Limited,
Thirumangalam EIE,
No.3 and 4, NH-7 Road,
Kalavasal, Arasaradi,
Madurai – 625 001,
Through its Branch Manager ... Appellant/Second Respondent

.Vs.

1.K.Jeyaraj ... Ist Respondent/Petitioner

2.M.Suresh Murugan ...2nd Respondent/Ist Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying this Court to set aside the award made in M.C.O.PNo. 223 of 2022, dated 27.3.2024, on the file of the Motor Accidents Claims Tribunal(Special District Judge), Madurai.

For Appellant : Mrs.K.R.Shivashankari

For Respondent-1 : Mr.V.Sakthivel



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For Respondent-2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the award made in M.C.O.PNo.223 of 2022, dated 27.03.2024, on the file of the Motor Accident Claims Tribunal(Special District Judge), Madurai.

2.The Civil Miscellaneous Appeal is preferred mainly challenging the quantum of compensation awarded by the Tribunal.

3.The case of the claimant is that on 18.11.2021 at about 4.30 p.m., when the deceased J.Balamurugan was riding his Hero Honda Splendor two wheeler bearing Registration No. TN 58AC 0595 along Aruppukkottai Main Road, from west to east on the extreme left side of the road in a moderate speed near the vacant land of one Seval situated at Vellakkal Muniyandi Kovil and Harshita Hospital, the first respondent's driver of Mahindra Bolero Pickup van bearing Registration No.TN 58 U 8429 came in the opposite direction in a rash and negligent manner, dashed against the deceased. Due to the accident, the deceased



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was thrown out of the vehicle and sustained severe head injuries and other injuries all over the body and was immediately taken to Harshita Hospital for treatment and then to Madurai Government Rajaji Hosptial. Despite better treatment, the deceased died on the next day ie, on 19.11.201 and that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent vehicle. Hence, the first respondent/owner and his insurer/2nd respondent are liable to pay compensation. Therefore, the Petitioner/claimant has filed the Claim Petition claiming a sum of Rs.20 lakhs as compensation.

4.On the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and eight documents were marked. On the side of the respondents, one M.R.Boobalan was examined as R.W.1 and two documents were marked as Ex.R1 and Ex.R2. On appreciation of both oral and documentary evidence, the Tribunal has awarded a sum of Rs.22,21,752/ as compensation. Aggrieved by the same, the appellant/Insurance Company has filed this Civil Miscellaneous Appeal.



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5. The learned counsel for the appellant vehemently contended that the deceased was aged 32 years at the time of accident and he was a milk vendor and the Tribunal has fixed his income based on the Cost Inflation Index and by taking the monthly income at Rs.6,500/-. As per the Cost Inflation Index in the year 2021-22 and by multiplying 317/129, has arrived at the monthly income of Rs.15,973/-.

6. The learned counsel for the first respondent/claimant has strenuously argued that for the deceased who was aged about 32 years, working as milk vendor, the income fixed by the Tribunal at Rs.15,973/- is acceptable one. To buttress his argument, the learned counsel placed reliance in the case of ***Rajendran and another v.s. Illayaraja and another reported in 2024(2) TN MAC 453.***

7. On a careful perusal of the records, it appears that at the age of 32 years, the deceased, who was 32 years old at the relevant point of time, was working as Milk Vendor died in the accident leaving behind his father. It has been stated that he was earning a sum of Rs.30,000/- working as milk vendor and the notional



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income of Rs.6,500/-was fixed by the Tribunal as mentioned supra. The Tribunal fixed his income based on Cost Inflation Index at Rs.15,973/- and by adding 40% towards future prospects as per the decision in ***National Insurance Company Limited .vs. Pranay Sethi and others*** reported in ***2017(16)SCC 680***, arrived at Rs.22,632/-.The accident occurred in the year 2021. In the year 2021, the monthly income of Class-IV employees is Rs.20,000/-.Therefore, I find that the income fixed by the Tribunal is acceptable one. Based on the aforesaid discussion, I find no perversity or illegality in the fixation of income of the deceased and the amount awarded by the Tribunal is just and reasonable and as such the Civil Miscellaneous Appeal is liable to be dismissed.

8.Accordingly, the Civil Miscellaneous Appeal stands dismissed. The appellant-Insurance Company is directed to deposit the award amount, as ordered by the Tribunal, with accrued interest and costs to the credit of claim petition before the Tribunal, less the award amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount so deposited, less the award amount, if any already withdrawn, by



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filing necessary application before the Tribunal. No costs. Consequently,
connected Miscellaneous Petition is closed.

04.11.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No

vsn

To

The Motor Accidents Claims Tribunal
(Special District Judge),
Madurai.

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J.

vsn

JUDGMENT MADE IN

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