



C.M.A.(MD) No.995 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.995 of 2021

T.Joshiya,
2.Silverstar.

... Appellants

Vs.

1.S.Lakshmi,
2.The Branch Manager,
United India Insurance Company Ltd.,
54-A, Mythili Nivas,
Palani Road, Dindigul – 624 001.

3.S.Ananth,
4.The Branch Manager,
IFFCO-TOKIO General Insurance Co. Ltd.,
No.82, Preetham Plaza, I Floor,
Chandrakandhi Nagar, Ponmeni,
Madurai.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 27.07.2021 passed in M.C.O.P.No.1379 of 2015 on the file of the Motor Accidents Claims Tribunal, Special District Court. Tiruchirappalli.

For Appellants

: Mr.R.Maheswaran



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For Respondents :
for R1 & R3 : No appearance
for R2 : Mr.J.S.Murali
for R4 : Mr.V.Sakthivel

J U D G M E N T

The claimants have filed this appeal seeking enhancement of compensation.

2. Since the finding on negligence is not under challenge, the facts leading to the filing of the claim petition are unnecessary for the disposal of the appeal.

3. The learned counsel for the appellants/claimants submitted that though the claimants had not produced any documentary evidence to prove the avocation, they had examined the wife of the deceased as P.W.1 to prove that the deceased was working as a Mason and was earning approximately Rs.20,000/- p.m. and that the Tribunal had taken a very meagre notional income of Rs.7,000/- p.m. and prayed for enhancement of the compensation.



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4. The learned counsels for respondents 2 and 4, who have both been directed to pay the compensation at 50% each, per contra, submitted that the award of the Tribunal is just and reasonable and prayed for confirmation of the award.

5. The only point for consideration in the instant appeal is '*whether the quantum of compensation awarded by the Tribunal is just and reasonable?*'

6. Though the claimants had stated that the deceased was working as a Mason, no documentary evidence was produced to prove either the avocation or income of the deceased. The deceased was aged 37 years at the time of accident. P.W.1- the wife of the deceased had deposed that the deceased was earning nearly Rs.20,000/- p.m, which is not supported by any other evidence.

7. Considering the age of the deceased, year of the accident and the avocation of the deceased, this Court is of the view that it would be just and reasonable to fix the notional income of Rs.12,000/- p.m. The deceased would be entitled to 40% towards future prospects. The



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multiplier applicable is '15'. 1/3 has to be deducted towards personal expenses as there are two dependents. Thus, the compensation under the head 'loss of dependency' has to be Rs.12,000/- + Rs.4,800/- x 12 x 15 x 2/3 = Rs.20,16,000/-.

8. The claimants are also entitled to 'loss of consortium' at Rs.40,000/- each. Thus, the same is enhanced to Rs.40,000/- each. The compensation under the heads 'loss of estate' and 'funeral expenses' is enhanced to Rs.15,000/- each. The compensation under the heads 'Medical expenses' and 'Transportation charges' is confirmed. Thus, the compensation is modified as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of dependency	Rs.11,75,940/-	Rs.20,16,000/-	Enhanced
2	Transportation charges	Rs. 7,000/-	Rs. 7,000/-	Confirmed
3	Medical expenses	Rs. 98,320/-	Rs. 98,320/-	Confirmed
4	Loss of Estate	Rs. 10,000/-	Rs. 15,000/-	Enhanced
5	Loss of consortium	Rs. 35,000/-	Rs. 40,000/-	Enhanced
6	Filial Consortium	Rs. 35,000/-	Rs. 40,000/-	Enhanced
7	Funeral Expenses	Rs. 10,000/-	Rs. 15,000/-	Enhanced
Total		Rs.13,71,260/-	Rs.22,31,320/-	Enhanced by Rs.8,60,060/-



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9. However, the finding of the Tribunal as regards the pay and recover is confirmed. The second respondent is at liberty to recover the compensation in accordance with the guidelines issued by the Hon'ble Supreme Court in the case of *Nanjappa vs. State of Karnataka* reported in **2015 (1) SCC 550**. Further, having held that the third respondent had a valid insurance policy with the fourth respondent, the finding of the Tribunal that both the respondents 3 and 4 are jointly and safely liable to pay 50% of the compensation may not be appropriate. The fourth respondent as the insurer of the third respondent is alone liable to pay the compensation as per the apportionment fixed by the Tribunal.

10. The respondents 2 and 4 shall each deposit 50% of the enhanced compensation (i.e) second respondent shall deposit Rs.11,15,660/- and the fourth respondent shall deposit Rs.11,15,660/- with accrued interest at 7.5% p.a., from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

11. On such deposit, the appellants/claimants are entitled to



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withdraw their award amount as per the apportionment fixed by the Tribunal, together with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The appellants/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

12. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

10.09.2024

(2/2)

Index: Yes/ No

NCC: Yes / No

Speaking Order / Non-Speaking Order
apd

To:

1.The Motor Accidents Claims Tribunal,
Special District Judge. Tiruchirappalli.

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



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SUNDER MOHAN, J.

apd

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(2/2)**