



C.M.A(MD)No.830 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.830 of 2019

and

C.M.P(MD)No.10904 of 2019

HDFC ERGO General Insurance Company Limited,
Through its Branch Manager,
75 A, Trivandrum Highway,
Palayamkottai,
Tirunelveli.

: Appellant/2nd Respondent

VS.

- | | |
|-----------------|--|
| 1. V.Rajendran | |
| 2. R.Padmavathy | : Respondents 1 & 2/Petitioners 1 & 2 |
| 3. M.Kalaingar | : 3rd Respondent/1st Respondent |

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment of the Motor Accidents Claims Tribunal, III-Additional District Judge, Tirunelveli, dated 05.12.2018 in MCOP.No.1438/2016.



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For Appellant : Mr.N.Shyllappa Kalyan

For R1 & R2 : Mr.B.Rajesh Saravanan

JUDGMENT

[Judgment of the Court was made by **MRS.V.BHAVANI SUBBAROYAN.J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal, III Additional District Court, Tirunelveli, in M.C.O.P.No.1438 of 2016, dated 05.12.2018, the insurance company has filed the present appeal.

2. The appellant insurance company is the 2nd respondent in the claim petition and the respondents 1 & 2 are the claimants. The 2nd respondent is the insurer of the offending Tipper Lorry. The respondents 1 & 2 filed the claim petition in M.C.O.P.No.1438 of 2016, claiming a sum of Rs.50,00,000/- as compensation for the death of their son in the accident that occurred on 08.06.2016. By judgment and decree dated 05.12.2018, the Tribunal awarded a sum of Rs.28,86,000/- as compensation.



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3. Facts of the Case:-

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According to the respondents/claimants, on 08.06.2016 about 03.45 p.m., when the deceased after attending a job interview, was returning in his two wheeler bearing registration No.TN-69-PZ-7668 on Kadambur road near Pasuvanthanai North Car Street at E.B office. At that time, a Tipper Lorry bearing registration No.TN-72-AM-6657 driven by its driver in a rash and negligent manner dashed the two wheeler of the deceased, in which, the head of the deceased got crushed and due to the said impact, he died on the spot. The deceased was aged about 26 years and a B.E degree holder. The FIR was registered against the driver of the Tipper Lorry. The accident occurred only due to the rash and negligent driving by the driver of the Lorry insured with the appellant. Therefore, the respondents/claimants filed the claim petition claiming compensation.

4. The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the Lorry. The deceased himself is the cause for the accident and prayed for dismissal of the claim petition.



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5. Before the Tribunal, the mother of the deceased examined herself as P.W.1 and eye witness to the occurrence was examined as P.W.2, and 19 documents were marked as Ex.A1 to A.19. An Assistant from the Regional Transport Office was examined as R.W.1 and Exs.R1 to R5 were marked on the side of the appellant.

6. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the Tipper Lorry and directed the appellant to pay a sum of Rs.28,86,000/- as compensation and the details are as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income	28,56,000/-
2	Consolidated sum under other heads Expenses	30,000/-
<i>Total</i>		<i>28,86,000/-</i>

Aggrieved over the same, the appellant filed this appeal questioning the “*quantum of compensation*” alone awarded by the Tribunal.



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7.Submission of the learned counsel for the appellant:

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The learned counsel for the appellant submitted that at the time of accident, the deceased was not working and therefore, the Tribunal ought not to have taken Rs.20,000/- as monthly income of the deceased which is exorbitant.

8.Submission of the learned counsel for the respondents 1 & 2:

The learned counsel for the respondent claimant submitted that relying upon the precedent in **2017 ACJ 1036 (S.Saraswathy and another vs. A.Elumalai and another)**, the educational qualification, training certificate and Exs.A14 & A15-experience certificates of the deceased, the Tribunal correctly fixed the income of the deceased at Rs.20,000/- per month. In the said circumstances, no reduction is required on the monthly income of the deceased. He further submitted that there was no amount awarded for loss of love and affection. Hence, he seeks for enhancement of compensation.

9. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 & 2 and also perused all the materials available on record.



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10.The following points arise for consideration in this appeal:

10.1.Whether the compensation granted is in accordance with law?

11. Discussion on quantum

(i) Admittedly, the deceased was an Engineering Graduate and he completed the same in Anna University which has issued Ex.A10- Engineering degree certificate and Ex.A11- mark statement. Exs.A14 & A15 are experience certificates of the deceased. The deceased was aged 26 years at the time of accident. The Tribunal relying upon the precedent in **2017 ACJ 1036 (S.Saraswathy and another vs. A.Elumalai and another)**, fixed a sum of Rs.20,000/- as monthly income of the deceased. Considering his graduation and the experience certificates, we are of the view that fixation of monthly income at Rs.20,000/- is reasonable. The application of 17 multiplier by the Tribunal is also correct. In the said circumstances, this Court finds no merit on the contention of the appellant.



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(ii) It is the contention of the learned counsel for the respondents/claimants that no amount was awarded for the loss of love and affection. It is the duty of this Court to grant just compensation even if there is no cross appeal filed by the claimants. The claimants are parents of the deceased and they lost the love and affection of their son. Therefore, a sum of Rs.40,000/- each is awarded for the loss of love and affection as per the Hon'ble Constitution Bench judgment of the Supreme Court in case of *National Insurance Co.Ltd., vs. Pronay Sethu and others* reported in **2017(2) TNMAC 609**.

12. Conclusion

In the light of the above said discussion, claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:

<i>Sl. No</i>	<i>Compensation</i>	<i>Amount in Rupees</i>
1	Loss of Income	28,56,000/-
2	Loss of love and affection	80,000/-
<i>Total</i>		<i>29,36,000/-</i>



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13. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Tribunal is modified to the extent indicated above. The appellant is directed to deposit the award amount of Rs.29,36,000/- with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 2 are permitted to withdraw the same equally with proportionate accrued interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
11.03.2024

Index :Yes / No
Neutral Citation :Yes / No
bala/sbn

To

1. The Motor Accident Claims Tribunal,
III-Additional District Judge,
Tirunelveli.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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and

K.K. RAMAKRISHNAN, J.

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