



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

|              |            |
|--------------|------------|
| RESERVED ON  | 26.11.2021 |
| DELIVERED ON | 21.12.2021 |

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**CORAM :**

**THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**C.M.A. (MD) .No.1887 of 2013**

United India Insurance Company Limited,  
Represented by its Divisional Manager,  
Divisional Office, Xavier Building II Floor,  
P.W.D. Road, Nagercoil.

...Appellant/2<sup>nd</sup> Respondent

Vs.

Rajayyan (Died)

1.Selvi Bai

2.Stella Blessy (Died)

3.Vino R.Sarath Benni

4.Babu

5.M.Bebin Issac Mathew

6.B.Ajith Mathew

7.B.Abila Blessy

...Respondents 1 to 3/Petitioners

...4th Respondent/1st Respondent

...LR of 2nd Respondent

[Respondents 5 to 7 are brought on record as LR's of the deceased 2<sup>nd</sup> respondent vide order dated 24/08/2021)

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree dated 11.10.2012 passed in M.A.C.O.P.No.18 of 2006 on the file of the Motor Accident Claims Tribunal, Sub Court, Padmanabapuram, to allow the appeal with Cost.

For Appellant : Mr.G.Prabhu Rajadurai

For R-1 to R-3,

R-5 to R-7 : Mr.T.Selvakumaran

For R-4

: No appearance

**ORDER**

This Civil Miscellaneous Appeal has been filed to set aside the order and decree, dated 11.10.2012 in M.A.C.O.P.No.18 of 2006 passed by the learned Motor Accident Claims Tribunal/Sub Judge, Padmanabapuram.



2.It is a case of fatal accident, which took place on 29.10.1997 the deceased Betch Diana was travelling along with the 4<sup>th</sup> respondent herein in Hero Honda Motor Bike bearing Regn. No.TN-42-9540 driven by the 4<sup>th</sup> respondent who drove the two wheeler in a rash and negligent manner and dashed hump of road and the deceased was thrown out from the Motor bike. Due to the accident, the deceased died in the hospital on 31.10.1997 at about 06.25 p.m.

3.The claimants have filed a petition in M.C.O.P. No.18 of 2006 on the file of the learned Motor Accident Claims Tribunal/Sub Judge, Padmanabapuram, seeking compensation.

4.Before the Tribunal, on the side of the claimants, P.W.1 was examined and marked nine documents as Exs.P.1 to P.9 and R.W.1 was examined and Ex.R.1 and R2 were marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the insurance company and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the 4<sup>th</sup> respondent herein and directed the appellant to pay a sum of Rs.7,42,000/-as compensation.

6.Against the award passed by the tribunal, the appellant/insurance has preferred this present appeal.

7. Heard on either side. Perused the material documents available on record.

8. This Civil Miscellaneous Appeal is filed on the ground that the claims tribunal has not analysed and considered the evidence, both oral as well as documentary, available before it in a proper perspective and methodically. The claims tribunal has failed to note that in this regard that the appellant has pleaded specifically in its counter statement that there was no insurance policy for the motor cycle involved in the said accident and that in the absence of the same the appellant denies its liability. The claims tribunal has failed to note that the deceased was a bachelor at the time of accident and that the contribution of a bachelor to her parents could not be the same when she is married. The compensation amount of Rs.7,42,000/-awarded by the tribunal is very high and exorbitant and is liable to be modified.

9.The claimants have filed a petition in M.C.O.P.No.18 of 2006 for the death of the daughter of the 1<sup>st</sup> claimant who died in road accident. On 29.10.1997, the 4<sup>th</sup> respondent herein was riding a Hero Honda Motor Bike bearing Regn. No.TN-42-9540, the deceased was a pillion rider. The 4<sup>th</sup> respondent drove the two wheeler in a rash and negligent manner and dashed hump of road and the deceased Diana



was thrown out from the Motor Bike. In the accident, the deceased sustained severe injuries and she died on 31.10.1997.

10.The tribunal has awarded a sum of Rs.7,42,000/-with 7.5% interest and directed the appellant/insurance company to pay the award of compensation to the claimants.

11.Eventhough, the First Information Report was registered against the 4<sup>th</sup> respondent herein, the vehicle involved in the accident was insured with the appellant/insurance company. The deceased was a pillion rider. As per policy, the appellant/insurance company is liable to pay compensation.

12.At the time of accident, there was a valid policy. The insurance policy for the vehicle is produced in this appeal. Hence, only the appellant/insurance company is liable to pay compensation.

13.Since the deceased is a nursing student at the time of accident, her monthly income is fixed as Rs.6,000/- is reasonable one.

14.At the time of accident, the deceased was aged about 19 years. As per Judgment reported in **2011 ACJ 737**, the Hon'ble Supreme Court held that the age of the deceased to be considered for multiplier. But, the tribunal has erred in fixing the multiplier at the age of the mother of the deceased.

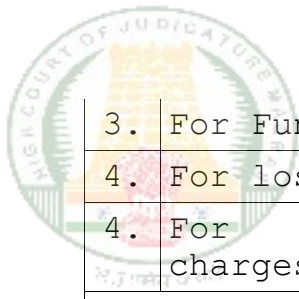
15.The deceased is a bachelor. So, 50% is to be deducted for personal expenses.

16.So, loss of income Rs.6000 x 12 x 18 =12,96,000/-. For personal expenses 50% to be deducted.

17.On hearing both sides, this Court is inclined to modify the award amount of compensation passed by the Tribunal.

18.Accordingly, the claimants are entitled for compensation as follows:

| S.<br>No<br>. | Description                                                                | Amount awarded by |               | Award<br>confirmed /<br>enhanced /<br>granted |
|---------------|----------------------------------------------------------------------------|-------------------|---------------|-----------------------------------------------|
|               |                                                                            | Tribunal          | this Court    |                                               |
| 1.            | For Loss of income [12,96,000/2]                                           | Rs. 6,72,000/-    | Rs.6,48,000/- | modified                                      |
| 2.            | Loss of love and affection for the mother. [Rs.10,000/- for each claimant] | 30,000/-          | Rs. 40,000/-  | modified                                      |



|              |                       |                      |                      |           |
|--------------|-----------------------|----------------------|----------------------|-----------|
| 3.           | For Funeral Expenses  | Rs.10,000/-          | Rs.10,000/-          | confirmed |
| 4.           | For loss of Estates   | Rs.10,000 /-         | Rs.10,000/-          | confirmed |
| 4.           | For Ambulance charges | Rs.20,000/-          | Rs.20,000/-          | confirmed |
| <b>Total</b> |                       | <b>Rs.7,42,000/-</b> | <b>Rs.7,28,000/-</b> |           |

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

19.In view of the said modification, this Civil Miscellaneous Appeal is partly allowed, and the award amount of Rs.7,42,000/- granted by the learned Motor Accident Claims Tribunal/ Subordinate Judge, Padmanabapuram, is reduced to Rs.7,28,000/-with 7.5%. The appellant/insurance company is directed to deposit the entire award amount, within a period of Four weeks, from the date of receipt of copy of the order. After depositing, the 1<sup>st</sup> claimant(mother) is entitled to withdraw a sum of Rs.5,28,000/-with interest and the 2<sup>nd</sup> claimant(brother) is entitled to withdraw a sum of Rs.2 lakhs with interest. If the appellant/insurance company deposited the excess amount is to be refunded to the insurance company. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

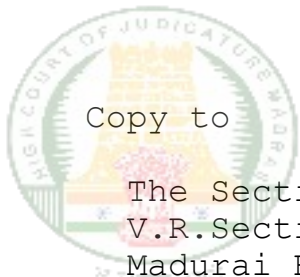
Sub Assistant Registrar(CS)

ksa

**Note:**In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Motor Accident Claims Tribunal/  
Sub Court,  
Padmanabapuram.



Copy to

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

WEB COPY

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate ( SR-40038[F] dated 22/12/2021 )

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-40050[F] dated 22/12/2021 )

**C.M.A. (MD) .No.1887 of 2013**  
**21.12.2021**

RK(24/01/2021) 5P 6C