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C.M.A.Nos.2698 & 1961 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.Nos.2698 and 1961 of 2021
and
C.M.P.No.10572 of 2021**

C.M.A.No.2698 of 2021

1.R.Sai Sumathi

2.S.Abinaya

3.S.Agalya

4.R.Thirugnanamoorthy

5.K.Lilli Ammal

... Appellants

Vs.

1.R.Karunanithi

2.United India Insurance Company Ltd.,
Third Party Service Hub, Plot Nos.35,36,37
A R Plaza, 45 Feet Road,
Balaji Nagar Extn, Saram
Pondicherry – 605011.

... Respondents

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PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 16.10.2020 made in M.C.O.P.No.163 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub-ordinate Judge, Cuddalore.

For Appellants : M/s.Ramya V.Rao

For Respondents : R1 – Notice - Refused.
Mr.P.Sankaranarayanan for R2.

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M/s.United India Insurance Co.Ltd.,
Motor Third Party Service Hub,
A.R.Plaza, No.35,36 & 37,
45 feet Road, Balaji Nagar Extn, Saram
Puducherry-605 011 .

... Appellant

Vs.

- 1.R.Sayee Sumathy
- 2.S.Abinaya
- 3.S.Akalya
- 4.R.Thirugnanamoorthy



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5.K.Lilliyammal

6.R.Karunanithi

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 16.10.2020 made in M.C.O.P.No.163 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub-ordinate Judge, Cuddalore.

For Appellants : Mr.P.Sankaranarayanan

For Respondents : M/s.Ramya V.Rao for R1 to R5.
R6 – Notice - refused.

COMMON JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

C.M.A.No.2698 of 2021 is filed by the claimants for enhancement of compensation granted by the Tribunal in the award dated 16.10.2020 made in M.C.O.P.No.163 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub-ordinate Judge, Cuddalore and C.M.A.No.1961 of 2021 is filed by the



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Insurance Company against the award dated 16.10.2020 made in M.C.O.P.No.163 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub-ordinate Judge, Cuddalore.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are hereinafter referred to by their rank in the appeal in C.M.A.No.2698 of 2021. (for the sake of convenience)

3.The Appellants filed M.C.O.P.No.163 of 2017 on the file of Motor Accident Claims Tribunal, Special Sub-ordinate Judge, Cuddalore, claiming a sum of Rs.40,00,000/- as compensation for the death of T.Sudhanthiran, who died in the accident that took place on 15.10.2016.

4.The appellants are wife, children and parents of the deceased Sudhanthiran. It is the case of the appellants that on 15.10.2016 at about 3.00 a.m, the deceased was traveling in Maruthi Alto car bearing Registration No. TN-22-



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AX-8759 driven by one Shamsudeen on the Kumbakonam - Chennai Main road

NH-45. A tipper lorry bearing Registration No.TN-31-M-1801 was parked in the center of the said road near Karaimedu Mariyamman Temple, without following the traffic rules and without any parking lights. The driver of the car could not see the tipper lorry at the center of the road, since it was dark and hence dashed against the parked tipper lorry from behind. In the said impact, the deceased sustained multiple injuries and succumbed injuries on the same day. The appellants therefore filed the claim petition claiming a sum of Rs.40,00,000/- as compensation against the owner of the Tipper lorry and the Second Respondent / Insurance company.

5.The First Respondent / owner of the vehicle remained exparte before the Tribunal.

6.The second respondent / insurance company filed counter denying the allegations in the claim petition. The second respondent has stated that the vehicle was parked on the road properly and further stated that a stationary vehicle cannot be held to be liable as per the Motor Vehicles Act. The second respondent also



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disputed the claim with regard to the income earned by the deceased and prayed

for dismissing the claim petition.

7.Before the Tribunal, the appellants examined the first appellant as P.W.1 and one Shamsudeen, the driver of the car as P.W.2, and marked Exs.P1 to Ex.P.10. The respondents examined the Police Inspector as R.W.1 and marked Exs.R.1 to R.3.

8.The Tribunal on considering the pleadings, oral and documentary evidence held that the accident was caused on account of the negligent act of the driver of the tipper lorry and directed the second respondent / insurance company to pay the compensation of Rs.25,18,750/- to the appellants.

9.Not being satisfied with the amounts awarded by the Tribunal, the appellants have filed the appeal in C.M.A.No.2698 of 2021 seeking enhancement of compensation and the second respondent / insurance company has filed the appeal in C.M.A.No.1961 of 2021 challenging the finding on negligence and the quantum awarded by the Tribunal.



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10. The learned counsel appearing for the second respondent / insurance company submitted that the report of the Motor Vehicle Inspector shows that the tipper lorry was damaged on the front side and therefore the version of the appellants that the car came from behind and collided with the stationary lorry cannot be accepted and as per the report of the Motor Vehicle Inspector, it could be a head on collision. The Inspector of Police who conducted the investigation filed a final report to the effect that the accident took place due to the rash and negligent act of the driver of the Maruthi Alto Car. Therefore, the version of the appellants that the lorry was parked in the middle of the road and the accident took place on account of the negligent act of the driver of the Tipper lorry cannot be believed. The learned counsel submitted that in any event the award of the Tribunal under the head 'loss of love and affection' at Rs.2,50,000/- is not correct and therefore, it has to be set aside. The appellants are entitled to only Rs.2,00,000/- towards consortium to wife, parental consortium for appellants 2 and 3 and filial consortium for appellants 4 and 5. The appellants are not entitled to any compensation under the head 'loss of love and affection' and the same has to



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be set aside. Hence, he prayed for allowing the C.M.A.No.1961 of 2021 and dismissing C.M.A.No.2698 of 2021 filed by the appellants for enhancement.

11.The learned counsel for the appellants submitted that the second respondent / insurance company, in their counter, admitted that the tipper lorry was parked on the road. This version is contrary to the present stand of the second respondent / insurance company that it was a head on collision. The learned counsel for the appellants further submitted that R.W.1 in the cross examination had admitted that he had not stated in which direction the lorry was parked. Therefore, this explains as to why there was damage on the front side of the lorry. P.W.2, driver of the Alto car in which the deceased travelled, had stated that the tipper lorry which came from the opposite direction, was parked in violation of the traffic rules. This also explains as to why the front side of the lorry was damaged as per the report of the Motor Vehicle Inspector. The learned Counsel for the appellants further submitted that the quantum awarded by the Tribunal is inadequate and it has to be enhanced. Hence, he prayed for allowing C.M.A.No.2698 of 2021 and dismissing C.M.A.No.1961 of 2021 filed by the second respondent / insurance company.



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12. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent / Insurance Company and perused the pleadings, evidence and documents on record.

13. The main contention of the second respondent / insurance company is that as per the report of the Motor Vehicle Inspector, the front side of the tipper lorry was damaged. The version of the appellants that the car came from behind and collided with the stationary lorry is improbable. We find that the evidence on record elicited through PW2 and RW1, dispels the submission of the learned Counsel for the second respondent / insurance company. PW2, the driver of the Alto car had stated in his evidence that the tipper lorry which came from the opposite direction was parked in the middle of the road. Further, RW1, Police Inspector who conducted the investigation had admitted in the cross examination that he had not specifically noted the direction in which the tipper lorry was parked. Therefore, the evidence of PW2 and RW1 confirms that the tipper lorry was parked in the opposite direction and hence the front side of the tipper lorry was damaged because of the collision. That apart, it is the specific case of the



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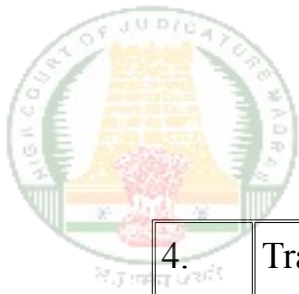
second respondent / insurance company in the counter filed before the Tribunal that the tipper lorry was parked and a parked vehicle cannot be liable for negligence. This is contrary to the present stand taken by the second respondent / insurance company that it could have been a head on collision. The evidence of PW2 has not been contradicted by the second respondent / insurance company by letting in any evidence. Therefore, we are of the view that the finding of negligence by the Tribunal is justified and does not call for any interference.

14.As regards the quantum, we find that the compensation awarded under the head 'Loss of Love and Affection' is Rs.2,50,000/-. However, parental consortium and filial consortium have not been awarded to the appellants 2 to 5. Therefore, the compensation under the head 'Loss of Love and Affection' is set aside. Instead, parental consortium for appellants 2 and 3 is awarded at Rs.40,000/- each and filial consortium for appellants 4 and 5 is awarded at Rs.40,000/- each. The first appellant has already been granted Rs.40,000/- under the head 'Loss of Consortium' and the same is correct. The appellants claimed that at the time of accident, the deceased was doing electrical contract work and earning Rs.33,100/- per month and marked Ex.P.9 salary certificate to that effect.



However, the author of the document was not examined to prove the income of the deceased. In the absence of any document, the Tribunal had fixed the monthly income of the deceased at Rs.15,000/-. As per Ex.P.3, the deceased was aged 48 years at the time of accident. Following the Judgments of the Hon'ble Apex Court in Judgment reported in **(2017) 16 SCC 680 [National Insurance Company Ltd., Vs. Pranay Sethi and others]** and the Judgment reported in **2009 (2) TN MAC 1 (SC): [Sarala Verma and others Vs. Delhi Transport Corporation and another]**, the Tribunal has rightly granted 25% towards future prospects and applied multiplier '13'. We see no reason to interfere with the said finding. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Income	21,93,750/-	21,93,750/-	confirmed
2.	Love and affection	2,50,000/-	---	Set aside
3.	Funeral Expenses	15,000/-	15,000/-	confirmed



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4.	Transport charges	5,000/-	5,000/-	confirmed
5.	Loss of Estate	15,000	15,000/-	confirmed
6.	Loss of consortium	40,000/-	40,000/-	confirmed
7	Loss of Parental Consortitum	----	80,000/-	granted
8	Loss of Filial Consortium	----	80,000/-	granted
	Total	25,18,750/-	24,28,750/-	Reduced by Rs.90,000/-

15. With the above modification, the Appeal in C.M.A.No.2698 of 2021 filed by the appellants is dismissed and the Appeal in C.M.A.No.1961 of 2021 filed by the Insurance Company is partly allowed. The compensation of Rs.25,18,750/- granted by the Tribunal is hereby reduced to Rs.24,28,750/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit the appellants are permitted to withdraw their respective share of the award amount as per the direction and apportionment



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fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The second respondent / Insurance Company is permitted to withdraw the excess amount, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)
29.11.2022

vsn/ay

Index : Yes / No

To

1.The Special Sub-ordinate Judge,
Motor Accident Claims Tribunal,
Cuddalore.

2.The Section Officer,
VR Section,
High Court of Madras,

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and
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and C.M.P.No.10572 of 2021**

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