



C.M.A.(MD)No.161 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 31.10.2022

Delivered On : 24.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.161 of 2012

The Oriental Insurance Co Ltd.,
Rep. by its Branch Manager,
Mayiladuthurai, 30/6E, First Floor,
Deen Plaza, State Bank Road,
Mayiladuthurai.

.. Appellant /2nd Respondent

Vs.

1.Mahalingam (Died)

2.Chandra

3.Minor.Vignesh (Died)

(Minor R is rep.by his father and
natural guadian R1-Mahalingam)
(R1 and R3 died and R2 is already on
record as LR of the deceased R1&R3,
vide Court order, dated 2.11.2022.

... Respondents 1 to 3 / Petitioners

4.Mohamed Gazali

... 4th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award, dated 08.07.2010, made in M.C.O.P.No.104 of 2008, on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Judge, Kumbakonam.



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For Appellant

: Mr.K.Balasubramanian

For Respondents

: Mr.S.Prabhu for R2

: No appearance for R4

: R1&R3-Died

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award,dated 08.07.2010, made in M.C.O.P.No.104 of 2008, on the file of the Motor Accident Claims Tribunal cum Additional Subordinate Judge, Kumbakonam. The appellant herein is the second respondent, the respondents 1 to 3 herein are the claimants and the fourth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.104 of 2008, is as follows:

On 15.06.2007, when the deceased – Krishnan was travelling in a motorcycle bearing Registration No.TN-49-Y-6460, as a pillion rider, when the rider of the two wheeler was driving the vehicle in a slow and cautious manner, keeping the left side of the road, a bus, bearing Registration No.TN-51-U-3054, came from behind the motorcycle in a rash and negligent manner and dashed against the motorcycle. The deceased sustained injuries and he died on his way to the hospital. The deceased was working as Manager in a private concern and was getting Rs.



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5,000/- as salary. The petitioners are his dependents and they claimed as sum of Rs.

20,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.104 of 2008, is as follows:

The owner and the insurer of the vehicle are necessary parties to the case. The petition is liable to be dismissed on that ground. The manner of the accident is wrongly stated in the petition. It is wrong to state that the accident has happened only due to the rash and negligent driving of the bus driver. It was the motorcyclist, who suddenly crossed the road, without noticing the traffic, dashed against the side portion of the bus. The age, avocation and income of the deceased are all denied. The petitioners are not the dependents of the deceased. The amount claimed is exorbitant.

4. 2 witnesses were examined and 11 documents were marked, on the side of the claimants. No witness was examined and no document was marked, on the side of the respondent. After considering both sides, the Tribunal has awarded Rs.7,60,000/- as compensation.

5. Against the award, the second respondent / appellant has filed this appeal on the following grounds:-



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The Tribunal failed to note that the multiplier ought to have been adopted on the basis of the age of the mother of the deceased and the proper multiplier should be '11' and not '18'. The Tribunal failed to consider that once a person get married, his contribution to the parents will automatically reduced. There is no provision to award compensation for loss of love and affection. The award is excessive.

6. On the side of the appellant, it is stated that the deceased died as a bachelor and 50% of his income to be deducted for his own expenses and the Tribunal is wrong in deducting 1/3rd of the income.

7. On the side of the claimant, it is stated that the compensation awarded by the Tribunal is reasonable and prayed the appeal to be dismissed.

8. On the basis of the evidence of P.W.1 and P.W.2 and on the basis of Ex.P1 and P8, the Tribunal fixed the liability on the appellant, which is reasonable. The Tribunal fixed the monthly income as Rs.5,000/-. It is seen that the Tribunal failed to deduct any amount towards personal expenses. 50% of the income has to be deducted for the personal expenses of the deceased. After deducting 50%, the deceased might have contributed Rs.2,500/- per month to his family members.



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WEB COPY 9. On the side of the appellant, it is stated that the age of the mother ought to have been taken into consideration for fixing the multiplier. The law is now well settled and the age of the deceased is to be taken into consideration for fixing the multiplier. The age of the deceased at the time of accident was 26 years, hence, multiplier '17' is applicable. The loss of income is calculated as Rs.5,10,000/- (Rs. 2,500/- X 12 X 18 = Rs.5,10,000/-). The Tribunal has awarded Rs.10,000/- towards loss of love and affection for each of the claimant (Totally Rs.30,000/-) and Rs. 5,000/- towards transportation and Rs.5,000/- towards extra nourishment, which are all reasonable.

10. The total compensation is calculated as follows:

Loss of income	:	Rs. 5,10,000/-
Loss of love and affection	:	Rs. 30,000/-
Transportation	:	Rs. 5,000/-
Extra nourishment	:	Rs. 5,000/-
Total compensation	:	Rs.5,50,000/-



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WEB COPY 11. This appeal is partly allowed. No costs.

(i) The quantum of compensation is reduced from Rs.7,60,000/- to Rs.5,50,000/-.

(ii) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.5,40,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) **Since the first claimant and third claimants are dead, the second claimant-Chandra, who is the LR of the first and third claimants, is entitled to Rs.5,40,000/- along with interest at 7.5% and costs.**

(iv) The claimants are not entitled for interest for the default period, if there is any. Excess amount, if any, shall be refunded to the appellant.

24.11.2022

Index : Yes/No

Internet : Yes/No

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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.



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- To
- 1.The Additional Subordinate Judge
Motor Accident Claims Tribunal,
Kumbakonam
 - 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.161 of 2012

24.11.2022