



C.M.A(MD)No.572 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.572 of 2009

M/s.United India Insurance Co.Ltd.,
Rep.through the Branch Manager,
23, E.V.R. Road, Puthur,
Trichy-620 017.

... Appellant

vs.

1.N.Saburabi @ Sabura

2.Minor Sahul Hameed

3.Minor Harshad Ahamad

(R2 & R3 rep. by their mother &
Guardian first respondent)

4.S.Sheik Bareeth

5.S.Rahamad Unnisa

6.V.Sathish Kumar

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, to set aside or modify the order and decree of the



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tribunal in M.C.O.P.No.140 of 2008 dated 09.02.2009 on the file of the

Motor Accident Claims Tribunal/Sub Court, Kulithalai.

For Appellant : Mr.C.Karthik

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Petition is filed to set aside or modify the order and decree of the tribunal in M.C.O.P.No.140 of 2008 dated 09.02.2009 on the file of the Motor Accident Claims Tribunal/Sub Court, Kulithalai.

2. Brief facts of the case is as follows:-

On 31.03.2019, the deceased S.Nazeer along with Abu Yusuff carried grill material tools for the purpose of delivery and assembling to a customer Mahathma Gandhi School, Alagar Koil, Madurai. Since there was a bridge construction in Melur-Alagar Koil Road, the driver took the vehicle to Madurai and proceeded to Alagarkoil. After passing Appan Thirupathi Village, the driver of the vehicle drove the vehicle in a rash and negligent manner. The vehicle lost its control and dashed against a tree. The deceased who was seated on the left side of the front



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portion sustained injuries and died on the spot. The driver also sustained injuries. Both the deceased Nazeer and the driver were taken to Government Hospital at Madurai. Alleging that the accident had happened due to the rash and negligent driving of the driver of the vehicle, the claimants filed a claim petition claiming compensation of Rs.10,00,000/-.

3.The owner of the vehicle remained absent before the Tribunal and therefore, he was set *ex parte*. The Insurance Company contested the claim petition on all the grounds available to the insured.

4.Before the Tribunal, on the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and ten documents were marked as Exs.P1 to P.10. On the side of the Insurance Company, no witness was examined and no document was marked.

5.The Tribunal, on appreciation of evidence adduced by the claimant, found that the rider of the two wheeler had caused the incident and awarded a compensation of Rs.8,48,000/- with interest at the rate of 6% per annum. Aggrieved over the same, the present appeal has been filed.



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6. It is the main contention of the learned counsel appearing for the appellant that as per the decision rendered in **Sarla varma and others vs. Delhi Transport Corporation and another** reported in (2009) 6 SCC 121, the correct multiplier to be adopted in the present case is '16'. But, the Tribunal has wrongly adopted multiplier of '17' and awarded an excessive compensation. Further, he submitted that the Tribunal has also awarded excessive compensation towards other heads. Therefore, he would contend that the quantum of compensation as awarded by the Tribunal should be reduced. The relevant portion of the said judgment reads as follows:-

42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.



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7. After re-appreciating the evidences placed before the Tribunal and taking note of the evidence of P.W.2-Abu Yusuff, this Court holds that the finding rendered by the Tribunal that, the accident has taken place only due to the rash and negligent driving of the driver of the TATA ACE MAGIC bearing Registration No. TN-45-AJ-7540, is perfectly in order and accordingly, the rash and negligent aspect is hereby confirmed. Since, the said lorry is insured with the present appellant, they are liable to pay compensation to the claimants, and therefore, the Tribunal directed the present appellant to pay the compensation to the claimants, which is also correct and accordingly, it is confirmed.

8. Insofar as the quantum of compensation is concerned, as per the decision rendered in **Sarla varma and others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**, the multiplier to be adopted in the present case is '16'. Therefore, the multiplier of '17', adopted by the Tribunal is wrong and the same is hereby modified and multiplier of '16' is adopted.

9. The Tribunal has awarded a sum of Rs.25,000/- towards the 'loss of love and affection', a sum of Rs.5,000/- towards for the funeral



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expenses of the deceased and a sum of Rs.2,000/- towards loss of consortium was awarded and the said award seems to be just and reasonable and therefore, it warrants no interference.

10. Accordingly, the award of the Tribunal in M.C.O.P.No. 818 of 2009 is modified as follows:-

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount granted by the Tribunal</i>	<i>Amount granted by this Court</i>
1	Loss of dependency	Rs.8,16,000/-	Rs.7,68,000/-
2.	Loss of love and affection	Rs.25,000/-	Rs.25,000/-
3.	Funeral expenses	Rs.5,000/-	Rs.5,000/-
4.	Loss of Consortium		
	Total	Rs.8,48,000/-	Rs.8,00,000/-

The compensation awarded by the Tribunal is reduced from Rs.8,48,000/- to Rs.8,00,000/- which shall carry interest at the rate of 6% per interest.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.



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Consequently, the connected Miscellaneous Petition is closed.

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(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.8,48,000/- to Rs.8,00,000/-.

(iii) The appellant – Insurance Company is directed to deposited the compensation awarded by this court, i.e., Rs.8,00,000/- together with interest at the rate of 6% per annum (if not already deposited) to the credit of M.C.O.P.No. 140 of 2008, on the file of the Motor Accidents Claims Tribunal, Sub Court, Kulithalai, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1, 4 and 5 are permitted to withdraw their share as apportioned by the tribunal. Since the respondents 2 and 3 herein are minors, their respective shares are ordered to be deposited in any one of the Nationalized Bank till they attain majority and the first respondent/mother is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors. No costs.

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Index :Yes/No

Internet :Yes/No



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A.A.NAKKIRAN .,J.

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To

- 1.The Motor Accident Claims Tribunal/Sub Court,
Kulithalai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

JUDGMENT MADE IN
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14.09.2022