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CMA.No. 1244 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **16.03.2023**

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI**

C.M.A.No. 1244 of 2021

1. D. Jothi
2. Minor D. Dhanyashri
3. P. Rathna

... Appellants

Vs.

1. L. Harish
2. The National Insurance
Company Limited,
Divisional Office II,
Balaji Towers,
Ramakrishna Road, Salem 636007.

3. Madhaiyan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 24.03.2020 made in M.C.O.P.No. 2352 of 2016, on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellants : Mr. C. Thangaraju

For Respondents : No appearance



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JUDGMENT

[Judgment of the Court was delivered by

K. GOVINDARAJAN THILAKAVADI

The above Civil Miscellaneous Appeal is preferred against the order of the Tribunal in M.C.O.P.No. 2352 of 2016 dated 24.03.2020 on the file of the Motor Accidents Claims Tribunal/Special District Judge, Salem.

2. The claimants in the Tribunal are the appellants in the appeal. In the impugned award, the Tribunal has directed the respondents to pay a sum of Rs. 14,40,880/- as compensation to the claimants for the death of the deceased.

3. Assailing the same, the appellants have preferred this appeal on the ground that the Tribunal erred in awarding contributory negligence on the part of the deceased that is 20 percent for not possessing valid driving license and not for wearing helmet at the time of the accident.

4. Further contention of the appellants is that the Tribunal has failed to award parental consortium and love and affection to the mother and minor child of the deceased.



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5. The facts of the case narrated before the Tribunal is that, on 16.07.2016, at 11:00 am while the deceased was driving two wheeler bearing Registration No. TN90 A 3297 from Muthunaickenpatti to Suramangalam Main Road, the offending vehicle bearing Registration No. TN 54 B 7768 driven by the driver in a rash and negligent manner against the deceased in which the deceased sustained fatal injuries and succumbed to death.

6. The Tribunal has awarded a sum of Rs. 13,70,880/- (Rs.8400/- *12*17 =Rs.17,13,600-3,42,720) towards loss of dependency, after fixing the income of the deceased at Rs.8400/-. In this regard, there is no dispute on the part of the appellants/claimants.

7. It is submitted that as per the judgment of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd., vs. Nanu Ram and others** reported in **2018(1) TN MAC 452 (SC)**, the minor child is entitled for parental consortium and the parents of the deceased are entitled for loss of love and affection.



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8. According to the learned counsel for the appellants, Tribunal had awarded a sum of Rs. 40,000/- towards loss of consortium, only to the wife of the deceased, and the same has not been considered for the other claimants, which is liable to be enhanced.

9. We have considered the submissions of the learned counsel for the appellants and the Insurance Company and also after perusing the material available on record, insofar as the negligence is concerned, this Court finds that deducting 20 percent for contributory negligence is appropriate, since the deceased at the time of accident has driven the vehicle, without driving license and without wearing helmet. With regard to the loss of parental consortium to the minor and loss of love and affection to the mother of the deceased, in our considered opinion and as per the decision in the **Magma General Insurance Co. Ltd.**, referred supra, ought to have been awarded by the Tribunal. Hence for this aspect, a sum of Rs. 40,000/- is granted towards parental consortium, for the minor, and another sum of Rs. 40,000/- is granted towards loss of love and affection, for the mother of the deceased.



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10. In respect of other heads, the amount awarded by the Tribunal towards loss of estate Rs. 15,000/- and towards funeral expenses Rs. 15,000/- is confirmed by this Court.

11. Thus, the compensation under the various heads awarded by the Tribunal is modified is as follows:

Sl.No	Heads	Compensation awarded by the tribunal Rs.	Compensation modified by this Court Rs
1	Loss of Dependency	13,70,880/-	13,70,880/-
2	Loss of parental consortium second claimant/minor		40,000/-
3	Loss of Consortium for P3 (Wife)	40,000/-	40,000/-
4	Loss of Parental Consortium third claimant/mother		40,000/-
5	Loss of Estate	15,000/-	15,000/-
6	Funeral Expenses	15,000/-	15,000/-
	Total	14,40,880/-	15,20,880/-

12. In view of the above, the compensation amount awarded by the



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Tribunal is enhanced from Rs. 14,40,880/- to Rs.15,20,880/-. Thus the award passed by the Tribunal is modified and consequently the Civil Miscellaneous Appeal is partly allowed. The respondent insurance company is directed to deposit the entire compensation amount at the rate of 7.5% interest per annum, within a period of six weeks from the date of receipt of a copy of this judgment, less if any amount already deposited.

13. On such amount being deposited, the first and third appellants/claimants are permitted to withdraw the amount as modified by this Court as per their proportionate share as apportioned by the Tribunal along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Insofar as the minor claimant/second appellant is concerned, the Tribunal is directed to deposit the share of the minor claimant in any one of the Nationalized banks, in Salem in a fixed deposit under the Cumulative Deposit Scheme, till the minor attains the age of majority and hand over the fixed deposit certificate to the first claimant/mother of the minor claimant. The first appellant/mother of the minor, is permitted to withdraw the accrued interest once in six months for the benefit of the minor, which has been deposited in the Nationalized Bank.

14. With the above, the Award of the Tribunal is modified.



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Consequently, the Civil Miscellaneous Appeal is partly allowed. No costs.

(D.K.K., J.) (K.G.T., J.)

16.03.2023

Intex : Yes/No
Internet : Yes/No
mrn

To

1. The Motor Accidents Claims Tribunal/Special District Court,
Salem.
- 2.V.R.Section,
Madras High Court,
Chennai.

D.KRISHNAKUMAR, J.
and



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K.GOVINDARAJAN THILAKAVADI , J.

(mrn)

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