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C.M.A.No.1572 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1572 of 2021
and CMP.No.8190 of 2021

United India Insurance Co., Ltd.,
Represented by Branch Manager,
No.74, Sri Lakshmi Complex,
1st Floor Opposite,
Taluk Office, Mysore Road,
Rangasamuthiram Post,
Sathyamangalam Taluk.

... Appellant

VS.

Arunpandian(died)
1.Susela
2.P.V.Misiriya
3.Prabhu
4.United India Insurance Co., Ltd.,
Represented by Branch Manager,
No.74, Sri Lakshmi Complex,
1st Floor Opposite,
Taluk Office, Mysore Road,
Rangasamuthiram Post,
Sathyamangalam Taluk,
(Notice may be dispensed
with for 4th respondent)

... Respondents



C.M.A.No.1572 of 2021

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 26.08.2019 made in M.C.O.P.No.348 of 2016, on the file of the Motor Accident Claims Tribunal (Subordinate Judge) Sathyamangalam.

For Appellant : M/s.C.Paranthaman
For R1 : Mr.S.Parathasarathy
For R2 to R4 : No Appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed to set aside the Decree and Judgment dated 26.08.2019 made in M.C.O.P.No.348 of 2016, on the file of the Motor Accident Claims Tribunal (Subordinate Judge) Sathyamangalam.

2. The appeal is filed by the third respondent in the claim petition (i.e) the Insurance Company challenging the the quantum of compensation. The parties will be referred to as per their ranking in the claim petition.



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3. The brief facts of the case are that on 04.03.2015 at about 8.30 a.m., when the claimant was riding a Bajaj Platina motorcycle, the first respondent's car came in a rash and negligent manner in the same direction dashed against the claimant, as a result of which, the claimant sustained grievous injuries.

4. According to the claimant, the accident occurred only due to the rash and negligent driving of the first respondent. The claimant was working as welder and earning a sum of Rs.20,000/- per month as income. Therefore, the claimant filed a claim petition for a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the motor accident. During the pendency of the claim petition, the claimant died on 14.05.2018 and the claim was further prosecuted by the legal heirs of the deceased.

5. The 3rd respondent filed a counter denying all the averments in the claim petition including negligence, liability and quantum.

6. Before the Claims Tribunal, the claimant examined himself as PW1 and marked Exs.P1 to P14. On the side of the third and fourth



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respondents, R.W.1 was examined and three documents were marked as

R.1 to R3.

7. The Claims Tribunal, on the basis of both oral and documentary evidence on record returned a finding of negligence against the first respondent. The Claims Tribunal on an assessment of the entire evidence on record awarded a sum of Rs.1,37,513/- as compensation along with interest at the rate of 7.5% p.a. to the claimants, the legal heirs of the deceased.

8. Aggrieved by the award of the Tribunal, the above appeal is filed by the insurance company, challenging the quantum of compensation awarded by the Tribunal, on the ground that the claimants failed to establish the nexus between the injuries sustained by the deceased in the accident and the resultant death. According to the appellant's counsel, the claimants are not entitled to the award towards grievous injuries of Rs.1,05,000/-.

9. The learned counsel for the claimants conceded that the claimants were entitled to compensation only towards pecuniary damages,



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like extra nourishment, medical expenses and transport charges but they were not entitled to any amount towards grievous injuries.

10. The learned counsel for the claimant relied on the Judgment of the Hon'ble Supreme Court in *The Oriental Insurance Company Limited, vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his legal representative Narinder Kahlon Gosakan and another*, C.A.No.4800 of 2021, in support of the plea that the claimants were entitled to compensation under the head of medical expenses.

11. I have heard both the learned counsels and I have also perused the materials available on record .

12. It is admitted by the learned counsel for the claimants that they have failed to establish the nexus between the injury sustained by the deceased in the accident and the consequent death. It is therefore clear that the claimants are not entitled to any compensation which is personal to the deceased i.e.loss of disability, pain and suffering etc. The claimants would be entitled only to pecuniary damages like, extra nourishment, transport charges and medical expenses etc.,



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13. In view of the same, the award of the claims Tribunal under the head of disability cannot be sustained. The award of the Tribunal is therefore modified as follows:-

Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced or deleted
1	Compensation for grievous injuries	1,05,000/-	-	Deleted
2	Extra nourishment expenses	5,000/-	12,500/-	enhanced
3	Attender Charges	10,000/-	10,000/-	Confirmed
5	Medical expenses	17,513/-	17,513/-	Confirmed
Total		Rs.1,37,513/-	*Rs.40,013/-	Reduced by Rs.97,500/-

* Rounded off to Rs.40,000/-

14. Thus, the claimant would be entitled to a sum of Rs.40,000/- together with interest at the rate of 7.5% per annum.

15. It is submitted by the learned counsel for the appellant that pursuant to the order of this Court dated 21.06.2021, the Insurance



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Company has already deposited 50% of the award amount along with accrued interest to the credit of M.C.O.P No.348 of 2016 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge) Sathyamangalam.

16. In the result,

- i) The appellant is directed to deposit the balance award amount if any, within a period of six weeks from the date of receipt of a copy of this order.
- ii) In case, there is any excess amount, the appellant is at liberty to withdraw the excess amount along with accrued interest.
- iii) The claimant is permitted to withdraw the amount less the amount if any, already withdrawn, by filing suitable application before the Tribunal. Consequently connected miscellaneous petition is closed. No costs.

25.04.2023

Index : Yes/No

Neutral Citation : Yes/No

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N.MALA,J.

kkd

To:

The Motor Accidents Claims Tribunal,
(Subordinate Judge) Sathyamangalam.

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25.04.2023