



CMA.No.2353 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

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1. S.Asokan
2. A.Dinesh
3. A.Divakar

Appellants

Vs

1. M.Paramasivam
2. The United India Insurance Company Limited
Thiruppur 641018

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 01.09.2018, made in MCOP.No.458 of 2015, by the Subordinate Judge (MACT) Sathyamangalam.

For Appellants : Mr.R.Nalliyappan

For Respondents : Mr.C.Paranthaman-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimants, against the judgement and decree, dated, 01.09.2018, made in MCOP.No.458 of 2015, by the Subordinate Judge (MACT) Sathyamangalam.
2. The Appellants/claimants, who are the husband and sons of the deceased, namely, Kanakambikai, have filed the claim petition before the Tribunal, seeking a compensation of Rs.16,00,000/- on various heads, for the death of the deceased, who died in a motor road accident, which took place on 04.06.2005. The claim petition was resisted, on various grounds, by the 2nd



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Respondent Insurance Company, by filing a counter. The 1st Respondent, owner of the offending vehicle remained exparte. On the side of the claimants, PW.1 was examined and Ex.P1 to Ex.P13 were marked. On the side of the 2nd Respondent Insurance Company, RW.1 was examined and Ex.R1 was marked.

3. Finding that the deceased died in the alleged motor road accident due to the rash and negligent driving of the driver of the offending vehicle, belonging to the 1st Respondent, the Tribunal has awarded a total compensation of Rs.8,29,000/- with interest at 6% p.a. from the date of the claim petition till the date of realization, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency	768000.00
2	Funeral Expenses	15000.00
3	Transportation Expenses	6000.00
4	Loss of Love and Affection	40000.00
Total Compensation		829000.00

Aggrieved by the quantum of compensation, this appeal has been filed by the claimants.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the dispute is only with regard to the quantum of compensation, the finding of the Tribunal with respect to the negligence aspect is confirmed and also, it is not necessary to narrate the entire facts in detail in respect of the accident.
6. According to the learned counsel for the Appellants, while arriving at the loss of dependency, the Tribunal erred in not adding 40% towards future



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prospects and the compensation awarded under the other heads are not just and proper and hence, it needs to be enhanced.

7. According to the learned counsel for the 2nd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper and since the Tribunal found that the driver of the offending vehicle did not possess valid licence at the time of the accident, it ought to have ordered for pay and recovery.
8. It is claimed by the claimants that the deceased was earning a sum of Rs.9,000/- p.m. by doing agricultural operations. However, the Tribunal fixed the same at Rs.6,000/-, which is on the lower side. Hence, the monthly income of the deceased can be fixed at Rs.9,000/-. Since the deceased was aged 37 years old at the time of the accident, the multiplier of 15 would be proper. Further, the Tribunal, while arriving at the loss of dependency, erred in not adding 40% of the monthly income towards future prospects. Hence, the loss of dependency needs to be calculated, by adding 40% towards future prospects. After adding 40% of the monthly income towards future prospects and then, deducting 1/3rd towards his personal expense, the loss of monthly dependency would come to Rs.8,400/-. Thus, the total loss of dependency would come to Rs.15,12,000/- (Rs.8400x12x15).
9. The compensation of Rs.40,000/- towards loss of love and affection awarded by the Tribunal is enhanced to Rs.80,000/- for the claimants 2 and 3. Further compensation of Rs.40,000/- towards loss of consortium for the 1st claimant and Rs.15,000/- towards loss of estate are hereby awarded. The



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compensation awarded under the other heads are confirmed. In all, the claimants are entitled to a total compensation of Rs.16,68,000/- with interest 7.5% p.a. from the date of the claim petition till the date of realisation.

10. In so far as the theory of pay and recovery is concerned, in the present case, the Tribunal has categorically held that the driver, who actually drove the offending vehicle at the time of the accident, had no valid and effective driving licence. The owner of the offending vehicle was not contesting the claim petition and had remained exparte. The Tribunal has directed the Insurance Company to pay the compensation. However, if the compensation is ordered to be recovered from the owner of the offending vehicle, the compensation will not be immediately recoverable from the owner. Hence, to meet the ends of justice, it is justified to pass an order directing the Insurance Company to pay the compensation awarded and recover it from the owner.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimants are entitled to a total compensation of Rs.16,68,000/- (Rupees sixteen lakhs sixty eight thousand only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Dependency	1512000.00
2	Funeral Expenses	15000.00
3	Transportation Expenses	6000.00
4	Loss of Love and Affection	80000.00
5	Loss of Consortium	40000.00
6	Loss of Estate	15000.00
Total Compensation		1668000.00

The 2nd Respondent Insurance Company is directed to deposit the



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entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, each of the claimants 1 to 3 are entitled to withdraw Rs.5,56,000/- each with proportionate interest, by filing proper application and by paying proper court fee for the enhanced compensation. Thereafter, the 2nd Respondent/ Insurance Company is entitled to recover the entire award amount with interest from the 1st Respondent, in accordance with law, in view of the categorical finding of the Tribunal that the driver of the offending vehicle did not possess valid licence at the time of the accident, thereby violated the terms and conditions of the insurance policy, which is not assailed or impeached by him. No costs.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Subordinate Judge (MACT) Sathyamangalam
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

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