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C.M.A.No.2552 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2552 of 2021

- 1.Manisha
- 2.Minor Shivani

Minor represented by his next friend and
natural guardian Mother Manisha

...Appellants

Vs

- 1.Manickkam
- 2.Jayamani
- 3.Jayakumari
- 4.Ramu
- 5.ICICI Lombard General Insurance Company Ltd.,
Swarnambika Plaza,
Omalar Main Road, Salem – 636 009.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.01.2019 made in M.C.O.P.No.1965 of 2016 on the file of the Special District Court, (II, Additional District Judge), FAC, Motor Accidents Claims Tribunal, Salem.



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For Appellants : Mr.Amar D.Pandiya
For R1 to R4 : No Appearance
For R5 : Ms.R.Sree Vidhya

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 09.01.2019 made in M.C.O.P.No.1965 of 2016 on the file of the Special District Court, (II, Additional District Judge), FAC, Motor Accidents Claims Tribunal, Salem.

2.The respondents 1 to 3/claimants are the father, step mother and step sister of the deceased, who filed M.C.O.P.No.1965 of 2016, showing the appellants herein/wife and daughter of the deceased as respondents 3 & 4, on the file of the Special District Court, (II, Additional District Judge), FAC, Motor Accidents Claims Tribunal, Salem, claiming a sum of Rs.25,00,000/- as compensation for the death of one Jayakumar, who died in the accident that took place on 16.05.2016.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 4th respondent's car driver and directed the 5th respondent/Insurance Company to pay a sum of Rs.22,30,910/- along with interest at the rate of 7.5% as compensation to the respondents 1 to 3 and appellants, under following heads:

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of Income	20,60,910
2.	Loss of Consortium for spouse	40,000
3.	Loss of Love & Affection for appellants and respondents 1 to 3	1,00,000
4.	Funeral Expenses	15,000
5.	Loss of estate	15,000
	Total	22,30,910

4.Aggrieved over the apportionment fixed by the Tribunal, the appellants/respondents 3 and 4 filed the present appeal.

5.Though notice has been served on the respondents 1 to 4 and their names are printed in the causelists, none appeared on behalf of the respondents 1 to 4, which shows that they are not interested to prosecute the case.



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6.Learned counsel appearing for the appellants would submit that the deceased, who is the husband of the 1st appellant died in the accident that took place on 16.05.2016. The respondents 1 to 3/father, step mother and step sister of the deceased filed M.C.O.P.No.1965 of 2016, on the file of the Special District Court, (II, Additional District Judge), FAC, Motor Accidents claims Tribunal, Salem and obtained an award, whereby, the Tribunal awarded a total sum of Rs.22,30,910/- and fixed the following apportionment:

Appellants'/respondents' relationship with the deceased	Apportionment fixed by the Tribunal
1 st respondent / father of the deceased	Rs.3,30,910/-
Respondents 2 and 3 / step mother and step sister of the deceased	Rs.1,50,000/- each
1 st appellant / wife of the deceased	Rs.10,00,000/-
2 nd appellant / daughter of the deceased	Rs.6,00,000/-



7.Learned counsel appearing for the appellants/respondents 3 and 4 would submit that since the appellants are the wife and daughter of the deceased they are the dependent of the deceased. The 1st respondent who is the father of the deceased was aged about 45 years at the time of filing the claim petition and he was living separately, the 2nd respondent is also living with the 1st respondent and the 3rd respondent has got married and therefore, they are not the dependent of the deceased. Hence, he prayed to reduce the apportionment fixed to the respondents 1 to 3 and award the same to the appellants herein.

8.Learned counsel appearing for the 5th respondent/Insurance Company would submit that the 5th respondent had deposited the entire amount of compensation awarded by the Tribunal and the respondents 1 to 3 have already withdrawn 50% of their respective shares.

9.Heard the learned counsel appearing for the appellants/respondents 3 and 4 as well as the 5th respondent/Insurance Company and perused the materials available on record.

10.Taking into consideration the submission made by the learned counsel



appearing for either parties and considering that fact that though the claim petition was filed by the respondents 1 to 3, who are the father, step mother and step sister of the deceased, the Tribunal ought to have considered the dependency of the appellants and the respondents 1 to 3, before fixing the apportionment. Since the respondents 1 to 3 are living separately, the appellants are the only dependent of the deceased. Therefore, this Court is inclined to modify the apportionment fixed by the Tribunal. Accordingly, the compensation awarded by the Tribunal to the respondents 1 to 3 is reduced in the manner stated at para No.11.

11. The 1st appellant is entitled to a sum of Rs.13,15,455/-, less the amount if any already transferred in her name. The 2nd appellant is entitled to sum of Rs.6,00,000/-, less the amount if any already transferred in her name. The first respondent is entitled to a sum of Rs.1,65,455/- and the respondents 2 and 3 are entitled to a sum of Rs.75,000/- each. As far as the entitlement amount of Rs.1,65,455/- by the first respondent and a sum of Rs.75,000/- each by the respondents 2 and 3 are concerned, the said amount had already been paid to them. Therefore, they are not entitled to any further amount. Hence, what are



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the balance lying to the credit along with interest before the Tribunal, the same shall go to the proportion mentioned above to the first and second appellant alone along with interest at the rate of 7.5%. The amount of first and second appellant has to be transferred to the Bank account directly by way of RTGS, within a period of three weeks from the date of receipt of a copy of this judgment.

12. In the result, the Civil Miscellaneous Appeal is disposed of. No costs.

11.07.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

The Special District Court,
(II, Additional District Judge), FAC,
Motor Accidents claims Tribunal, Salem.

KRISHNAN RAMASAMY,J.

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