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C.M.A.No.1535 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1535 of 2022

and

C.M.P.No.11407 of 2022

M/s. New India Insurance Company Limited,
Rep., by its Branch Manager,
No.375, Anna Salai, 2nd Floor,
Saidapet,
Chennai – 600 015.

... Appellants

Vs

1.Karpagam
2.M. Muralidharan
3.M.Mullaiarasai
4.M.Monisha
5.Dr.Malika Quaraishi

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.08.2021 in MCOP.No.1340 of 2018 on the file of the Motor Accident Claims Tribunal, (Fast Track Mahila Court), Krishnagiri.

For Appellant : Mr. J. Michael Visuvasam

For Respondents : Mr. M. Selvam, for R1 to R4
No Appearance for R5



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J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the award dated 09.08.2021 passed by the Motor Accident Claims Tribunal, (Fast Track Mahila Court), Krishnagiri in MCOP.No.1340 of 2018.

2. The appellant / Insurance Company is the second respondent in MCOP.No.1340 of 2018, on the file of the Motor Accident Claims Tribunal, (Fast Track Mahila Court), Krishnagiri.

3. The first respondent is the wife, 2 to 4 respondents are the son and daughters respectively of the deceased K.K.Murugesan. They had filed the claim petition stating that on 27.07.2018 at about 08.15 p.m., while the deceased was proceeding to his home, by walk, near KGL bus stop, Chennai – Krishnagiri road, the car bearing Registration No.TN-CK-1014 driven by its driver in a rash and negligent manner, dashed against the deceased, due to which, the deceased died on the spot. Hence, respondents 1 to 4 claimed compensation against the appellant / Insurance Company and the fifth respondent.



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4. The appellant filed a counter denying all the averments made in the claim petition. According to the appellant, the deceased Murugesan who was walking on the road, suddenly crossed the road without noticing the vehicles proceeding on the National Highways and invited the accident; in any case the claim is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the first respondent examined herself as P.W.1 and examined three other witnesses as P.W.2 to P.W.4 and marked Ex.P.1 to Ex.P.32 besides Ex.X1 and Ex.X2. The appellant did not examine any witness or mark any document on their side.

6. The Tribunal after considering the pleadings, evidence and documents filed, held that the accident occurred due to rash and negligent driving of the fifth respondent herein and directed the appellant and the fifth respondent jointly and severally to pay a sum of Rs.32,20,000/- as compensation to the respondents 1 to 4 / claimants.



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7. Aggrieved by the said order, the appellant had preferred the instant appeal challenging the quantum of compensation awarded by the Tribunal.

8. The learned counsel for the appellant submitted that the Tribunal had fixed excessive notional income i.e., Rs.20,000/- per month in the absence of any evidence to prove the income earned by the deceased. The Tribunal also erred in applying multiplier '14', although it was established before the Tribunal that the deceased was aged 47 years at the time of accident and hence, the learned counsel prayed for reduction of compensation amount.

9. The learned counsel for the respondents 1 to 4 / claimants per contra submitted that the respondents had marked Ex.P5 to E.P11 to show that the deceased was doing the business of coconut trading; that he had vast extent of agricultural lands and therefore, was earning a monthly income of Rs.50,000/-. The Tribunal, after considering all the evidence had correctly fixed the notional income as Rs.20,000/- per month and there is no reason to interfere with the same. Further, the learned counsel submitted



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that the respondents 2 to 4 were not awarded compensation under the head loss of love and affection and hence, prayed for dismissal of the appeal.

10. Though notice has been served on the fifth respondent and his name is printed in the cause list, none appeared for him.

11. The only question involved in the instant appeal is -

Whether the compensation awarded by the Tribunal is just and reasonable?

12. On perusal of the records, this Court finds that the Tribunal had fixed the notional income taking into consideration the evidence of PW.3 and PW.4, who are the Village Administrative Officers, to prove that the deceased owned vast extent of agricultural lands. The respondents also marked Ex.P4 to Ex.P11 to show that the deceased was also doing the business of trading in coconuts. However, this Court finds that the exact income earned by the deceased is not proved from the aforesaid oral and documentary evidence. In the facts, considering the age, avocation and also the fact that the deceased owned agricultural lands and the year of accident,



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this Court is of the view that it would be just and reasonable to fix

Rs.18,000/- as notional monthly income of the deceased. This Court also

finds that the correct multiplier is '13' since the deceased was aged 47 years

at the time of accident. The deceased was survived by his wife and three

children. Hence, 1/4th has to be deducted towards his personal expenses.

Hence, the award under the head loss of dependency has to be: -

$$18,000/- + 4500 (18,000 \times 25\%) \times 12 \times 13 \times 3/4 = 26,32,500/-$$

The Tribunal has not awarded any compensation towards loss of love and affection to the respondents 2 to 4, who are the children of the deceased.

Hence, a sum of Rs.40,000/- each to the respondents 2 to 4 is awarded towards loss of love and affection. The compensation awarded by the

Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is reduced from

Rs.32,20,000/- to Rs.28,22,500/-, break-up is as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	31,50,000/-	26,32,500/-	Reduced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of estate	15,000/-	15,000/-	Confirmed



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4.	Loss of love and affection	-	1,20,000/- (Rs.40,000/- each to the respondents 2 to 4)	Granted
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	32,20,000/-	28,22,500/-	Reduced by Rs.3,97,500/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.32,20,000/- is hereby reduced to Rs.28,22,500/- together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the respondents 1 to 4 are permitted to withdraw their share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected miscellaneous petition is closed. The appellant / Insurance Company is permitted to withdraw the excess amount lying in deposit to the credit of



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MCOP.No.1340 of 2018, if the entire award amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

24.08.2023

Index: Yes/No

Neutral Citation: Yes/No

AT

To

- 1.The Motor Accident Claims Tribunal,
(Fast Track Mahila Court), Krishnagiri.
2. The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

AT

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