



C.M.A. (MD)No.85 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.85 of 2023

1.Jenifer

2.Shanthana Prabhu

... Appellants/ Petitioners

Vs.

1.Azar Ali

2.The New India Assurance Company Limited,

Represented by its Manager,

Third Party, HUB, CTMS Bhavan,

BSNL Telephone Exchange,

70 Feet Road, Ellis Nagar,

Madurai – 625 016.

... Respondents / Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 (1) of the Motor Vehicles Act, 1988, against the judgment dated 25.08.2022 made in M.C.O.P.No.98 of 2019 on the file of the Motor Accident Claims Tribunal / Special District Judge, (MACT), Madurai.

For Appellants

: Mr.C.Godwin

For Respondents

: Mr.D.Sivaraman for R2

R1 – *ex parte*



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JUDGMENT

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Challenging the judgment passed by the Motor Accident Claims Tribunal / Special District Judge, (MACT), Madurai, in M.C.O.P.No.98 of 2019, dated 25.08.2022, the appellants have filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

The first petitioner is the wife of the deceased and the second petitioner is the son of the deceased Dhanasekar. The deceased was riding his TVS Moped, bearing Registration No.TN-59-AF-4033 on 31.12.2018 at about 3.30 p.m from South to North in Chinna Kanmai Gate Lock Road. At that time, a Motorcycle bearing Registration No.TN-22-AJ-3352 came from the opposite direction and both the vehicle met with head on collusion. Due to which, the deceased succumbed to injury on 01.01.2019. Hence, the petitioners have filed the claim petition, claiming a sum of Rs.6,00,000/- as compensation.



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4. The 2nd respondent - Insurance Company took a stand before the Tribunal that the deceased was not having a valid driving license and therefore, disputed the liability.

5. To substantiate the case before the Tribunal, on the side of the petitioners, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P5 were marked and on the side of the 2nd respondent - Insurance Company, R.W.1 was examined and Ex.R1 was marked and Ex.X1 was also marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident had occurred due to the negligence on the part of the deceased and awarded a sum of Rs.5 lakhs as compensation, taking note of the age mentioned in the postmortem certificate. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the petitioners.

7. Though several grounds have been raised in the appeal, the learned counsel appearing for the petitioners has mainly focused his argument that the claim petition has been filed under Section 163-A of the Motor Vehicles Act and



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hence, the claimants need not prove the negligence. He further submitted that the vehicle was insured with the 2nd respondent – Insurance Company and therefore, the 2nd respondent is liable to pay the compensation.

8. I have heard the learned counsel appearing on either side and perused the materials available on record.

9. On a perusal of the records, it is seen that the claim petition was filed under Section 163-A of the Motor Vehicles Act and therefore, the negligence need not be proved. The Tribunal has awarded compensation in terms of the Schedule II appended to the Motor Vehicles Act. The learned District Judge, has mechanically applied the multiplier without even verifying the claim petition and pleadings. In the claim petition, the age of the deceased was mentioned as 48 years. In fact, the second petitioner was aged about 26 years, as per the claim petition and he is the son of the deceased. Therefore, fixing the age of the deceased as 35 years is highly improbable and the age mentioned in the postmortem certificate cannot be relied upon. Therefore, this Court is of the view that the age fixed by the Tribunal has to be set aside. Taking note of the age of the second petitioner, the age of the deceased certainly would be 50 years and



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accordingly, the age of the deceased is fixed as 50 years and as per the Schedule II of the Act, the multiplier applicable to age 50 is '13'. The learned counsel appearing for the petitioners also fairly submitted that the calculation arrived by the Tribunal is not according to law and he is also agreed with the multiplier for the age of 50. This Court is fixed the notional income of the deceased at Rs. 2,500/- per month. Then, the loss of income would be Rs.3,90,000/- [2500 x 12 x 13]. Further, the Tribunal has not awarded compensation under the heads of loss of consortium, loss of love and affection, loss of estate and funeral expenses. Hence, this Court is inclined to award the compensation as follows:

S. No	Heads	Amount
1.	Loss of Annul Income	Rs.3,90,000/-
2.	Loss of Consortium	Rs. 40,000/-
3.	Loss of love and affection	Rs. 40,000/-
4.	Loss of estate	Rs. 15,000/-
5.	Funeral expenses	Rs. 15,000/-
	Total	Rs.5,00,000/-

10. In the result, this Civil Miscellaneous Appeal is disposed of. The petitioners are entitled to a sum of Rs.5,00,000/- as compensation along with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit and



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with costs, as apportioned by the Tribunal. Since the negligence need not be proved in the application filed under Section 163-A of the Motor Vehicles Act, which is not disputed by the 2nd respondent - Insurance Company, the 2nd respondent – Insurance Company is directed to deposit the compensation of Rs.5,00,000/- along with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit and with costs, less the amount, if any, already deposited, within a period of two months from the date of receipt of a copy of this order. No costs.

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NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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- To
- 1.The Motor Accident Claims Tribunal /
Special District Judge, (MACT), Madurai.
 - 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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