



A.S.(MD).No.213 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2023

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.213 of 2023

and

C.M.P.(MD).No.2377 of 2023

Oriental Insurance Company Limited
represented by its Branch Manager,
Oriental Insurance Company,
Opposite to Thiruvalluvar Depot,
Marthandam and Post,
Kanyakumari District.

... Appellant

Vs.

1.J.Reeba Jose
2.Minor S.R.Evangelin Priya
3.Minor Rayan Shaiju
4.Leela Bai
5.N.Saravanan
6.G.Sivakumar
7.The Reliance General Insurance Company Limited,
represented by its Branch Manager,
10/4/4, 2nd Floor, THAHA Plaza,
South Bypass Road,
Vannarpettai,
Tirunelveli District 627 003.

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 02.12.2021 made in M.C.O.P.No.79 of 2015 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kuzhithurai.



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For Appellant : M/s.Israel K.Mani
For R1 to R4 : Mr.M.P.Senthil
For R7 : Mr.V.Sakthivel

JUDGMENT

Challenging the quantum fixed by the Tribunal, the present appeal came to be filed by the Insurance Company.

2. The first petitioner is the wife, the second and third petitioners are the minor children and the fourth petitioner is the mother of the deceased. At the time of accident, the deceased was aged about 36 years. On 27.01.2015, at about 10.30 p.m., while the deceased was riding his motorcycle bearing Registration No.TN-75-S 9121 from Nagercoil to Marthandam National Highway Road from East to West, the first respondent drove the Tempo Traveller bearing Registration No.TN 22 BH 3649 belongs to the second respondent, in a rash and negligent manner and dashed against the motorcycle. As a result, the deceased succumbed to injuries. Hence, the petitioners claimed the compensation before the Tribunal. The third respondent took a stand that the accident was occurred only due to the negligence and careless act of the deceased and the occupation of the deceased also denied.



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3. On the side of the petitioners, P.Ws.1 to 3 were examined and Exs.P1 to P11 were marked and on the side of the respondents, no oral and documentary evidence was marked.

4. The Tribunal, on the basis of the evidence of P.Ws.1 and 2 and the F.I.R., come to the conclusion that the accident was occurred only due to the rash and negligent driving on the part of the driver of the offending vehicle and awarded a sum of Rs.36,03,945/-. Challenging the quantum of compensation, the present appeal has been filed by the Insurance Company.

5. While awarding the compensation, the Tribunal has fixed the monthly income of the deceased at Rs.20,000/-, mainly on the basis of the certificate issued by P.W.3, who is the neighbour of the deceased, wherein it has been stated that the deceased was drawing a salary of Rs.20,000/- working as a Field Officer in his Office at C.S.Timbers and Lorry Service. Though P.W.3 was examined to prove that certificate, his evidence does not even show that whether he is running such a Company and no documents relating to the entries of the salaries have been produced. Admittedly, P.W.3 is the neighbour of the deceased. If really the deceased was working as a Field Officer in the said



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Company, proper records to show that the number of workers working in the Company or the nature of the salary payable would have been produced and merely on the basis of the salary certificate, the Tribunal has fixed the monthly income of the deceased at Rs.20,000/-. This Court is unable to believe the certificate issued by P.W.3, without any corresponding documents.

6. In such a view of the matter, the income fixed by the Tribunal is without any basis and there is no evidence. However, considering the age of the deceased, the nature of the work and the accident took place in the year 2015, this Court is inclined to fix the notional income of the deceased at Rs.12,000/- and added 40% towards future prospects (Rs.12,000/- + Rs.4,800/- = Rs.16,800/-) and after deducting 1/4th share towards personal expenses, the total monthly income comes around Rs.12,600/- (Rs.16,800/- - Rs.4,200/-). Accordingly, the loss of dependency comes around Rs.22,68,000/- (Rs.12,600/- x 12 x 15 = Rs.22,68,000/-). Further, this Court awarded a sum of Rs.1,60,000/- towards loss of consortium to the first claimant and for love and affection to the other claimants and Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. Thus, the total compensation comes around **Rs. 24,58,000/-** in the following manner:



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S. No	Description	Modified Award Amount
1.	For loss of dependency	Rs.22,68,000/-
2.	For loss of consortium (1 st claimant)	Rs.40,000/-
3.	For loss of love and affection (2 nd to 4 th claimants)	Rs.1,20,000/-
4.	For funeral expenses	Rs.15,000/-
5.	For loss of estate	Rs.15,000/-
	Total	Rs.24,58,000/-

7. The above amount shall carry interest at the rate of 7.5% from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit the entire award amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is entitled to a sum of Rs.7,00,000/-, the second and third claimants are entitled to a sum of Rs.7,50,000/- each, and the fourth claimant is entitled to the remaining amount.

8. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.04.2023

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To

The Motor Accident Claims Tribunal,
Subordinate Judge,
Kuzhithurai.



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N.SATHISH KUMAR,J.

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