



C.M.A.(MD).No.138 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

CMA(MD) No.138 of 2022

A.Ari Balakrishnan

...appellant/
2nd petitioner

Vs.

1.M.Sreel

... 1st respondent/
1st petitioner

2.P.Senthilkumar

... 2nd respondent/
1st respondent

3.Reliance General Insurance Company Ltd.,
No.10/4/4, 2nd floor
Thaha Plaza, South Bye-pass road
Vannarpettai
Tirunelveli

... 3rd Respondent/
2nd respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 30.11.2018 in MCOP No.498 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Thoothukudi.



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For Appellant : Mr.G.Thalaimutharasu

For Respondents : Mr.V.Sakthivel for R3

J U D G M E N T

P.B.BALAJI, J.

This Civil Miscellaneous Appeal is directed against the award and decree dated 30.11.2018 made in MCOP No.498 of 2016 by the Motor Accident Claims Tribunal, Principal District Judge, Thoothukudi.

2.The claimants are the husband and father of the deceased respectively. On 05.07.2016, the deceased Sharmila was travelling in a motorcycle along with her brother. While so, the vehicle belonging to the first respondent, driven in a rash and negligent manner, hit the two wheeler, as a result of which, Sharmila sustained head injuries and she succumbed to the head injuries on the way to hospital. The claimants have stated that the deceased Sharmila was a B.Com(CA) graduate and also having a certificate in computer accounting and was earning a sum of Rs.16,000/- per month. Stating that both the claimants, namely, husband and father of the deceased were depending on the deceased, they



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made a claim for a sum of Rs.50,00,000/- and contended that the respondents 1 and 2 are jointly and severally liable to pay the compensation.

3. Before the tribunal, the insurance company filed a counter stating that the first respondent driver possessed only a license to drive Light Motor Vehicle and he does not have a badge endorsement to drive a passenger carrying vehicle. Therefore, it is stated that the insurance company is not liable to compensate the claimants. Even insofar as the award of compensation under various heads, it is stated that the award of compensation was excessive.

4. Before the tribunal, the claimants examined themselves as P.W.1 and P.W.2 and marked Exs.P1 to P14. On the side of the respondents, R.W1 – Motor Vehicle Inspector and R.W.2 – Legal officer of the 2nd respondent insurance company were examined and Exs.R1 and R2 were marked.

5. The tribunal, after considering the oral and documentary



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evidence, arrived at a finding that the accident had occurred only due to the rash and negligent driving of the first respondent driver in the course of his employment and therefore, the respondents are jointly and severally liable to compensate the claimants. Against the said award passed by the tribunal, the father of the deceased is before this Court with this appeal.

6. Heard the learned counsel for the appellant, the learned counsel for the third respondent and perused the materials available on record.

7. On going through the oral and documentary evidence, namely, the Ex.P1- FIR and the evidence of P.W.2 - the occurrence witness with regard to the rash and negligent driving of the first respondent, we do not find any infirmity in the finding rendered by the tribunal and hence, the fixing of the liability is hereby confirmed.

8. Coming to the quantum of compensation, the tribunal has found that the claimants did not file any claim to prove the age or income



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of the deceased and based on Ex.P2 - postmortem certificate, the tribunal fixed the age of the deceased at 28. Since the respondents did not dispute the said postmortem certificate, the finding with regard to the age of the deceased is also confirmed.

9. Insofar as income of the deceased is concerned, admittedly, no proof was adduced to establish the income of the deceased. It was stated to be Rs.15,000/- per month. However, considering the age and avocation of the deceased, the tribunal fixed a sum of Rs.4,500/- as notional monthly income of the deceased and deducted 50% towards her personal contribution and applying multiplier 17, arrived at a loss of income at Rs.4,59,000/- (2250*12*17).

10. The learned counsel for the appellant would submit that the notional income fixed by the tribunal is on the lesser side and he would place reliance on a judgment of the learned single Judge in CMA No. 2510/2009 dated 01.09.2020, where, taking into account the contribution of a home maker to the family, the income would be a sum of Rs.9,000/- and accordingly, this Court has fixed the notional income of the deceased



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home maker/wife. This amount was fixed by the learned single Judge for the accident that had occurred in the year 2017. Here in the instant case, the accident had occurred in July 2016 and therefore, applying the said notional income of Rs.9,000/- to the facts of the present case is just and proper. We also find that the tribunal had not factored future prospects of the deceased, after arriving at a notional income and deducting 50% towards personal expenses. Accordingly, considering the age of the deceased at 28, she would be entitled to future prospects at 40%. Accordingly, the compensation is reworked as follows:

11. The loss of income would be Rs.12,85,200/- (Rs.9,000+40% future prospects = Rs.12600 – 50% = 6300) (6300 x 12 x 17). The compensation on other heads, ie., loss of estate, funeral expenses and loss of consortium to the first petitioner/claimant are hereby confirmed. With regard to loss of dependency, the appellant is not a dependant and since he has an other earning son. We do not find any perversity in the said finding of the tribunal.



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12. In fine, the award of the tribunal is enhanced to Rs.13,55,200/- (Rupees thirteen lakhs fifty five thousand and two hundred only) from Rs.5,29,000/- as follows:

Heads	Awarded by the tribunal (Rs.)	Modified/ reduced	Final Compensation (Rs.)
Loss of income	4,59,000	(enhanced)	12,85,200
Loss of consortium to the 1 st respondent	40,000	(confirmed)	40,000
Loss of estate	15,000	(confirmed)	15,000
Funeral expenses	15,000	(confirmed)	15,000
Total	5,29,000	Enhanced	13,55,200

13. The learned counsel for the 3rd respondent would also bring to the notice of this Court that at the time of condonation of delay in M.P.No.10407 / 2021, in and by an order dated 08.02.2022, this Court had held that the claimants are not entitled to interest for a period of 304 days. Accordingly, the enhanced award amount of Rs.13,55,200/- (Rupees thirteen lakhs fifty thousand and two hundred only) shall be payable by the third respondent together with interest at 7.5% p.a., from the date of petition till the date of deposit, excluding the period of 304 days, within eight weeks from the date of receipt of a copy of this



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judgment, after deducting the amount already deposited, if any. On such deposit being made, the claimant/appellant is permitted to withdraw the entire award amount. The insurance company is directed to withdraw the excess amount, if any. It is brought to our notice that excess Court fee has been paid by the appellant. Accordingly, if any excess Court fee is paid, the same shall be refunded.

14. In the result, the civil miscellaneous appeal is allowed in part with the above modifications. No costs.

(T.K.R.,J.) (P.B.B.,J.)
10.11.2023

NCC : Yes/No
Index : Yes/No
RR

To

1.The Motor Accident Claims Tribunal,
Principal District Judge, Thoothukudi.

2.The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai.



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