



C.M.A.(MD).No.358 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.358 of 2023

and

C.M.P.(MD).No.4459 of 2023

IFCO -TOKKIO General Insurance Company,
through its Branch Manager,
O.K.S.Building, College Road,
2nd Cross Street, Old IT Office Near
KNP Puram, Thiruppur Town,
Thiruppur District.

... Appellant

Vs.

1.J.Vairamuthu
2.J.Kanimozhi
3.J.Shanthi
4.R.Subramanian

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24th February 2022 passed in M.C.O.P.No.77 of 2018 on the file of the Presiding Officer, Motor Accident Claims Tribunal, Additional District Judge, Additional District Court, Sivagangai in so far as quantum of compensation awarded concerned.

For Appellant : Mr.V.Sakthivel

For R1 to R3 : Mr.V.Kannan



C.M.A.(MD).No.358 of 2023

J U D G M E N T

WEB COPY

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Additional District Judge, Additional District Court, Sivagangai in M.C.O.P.No.77 of 2018, dated 24.02.2022, the present appeal has been filed by the Insurance Company.

2. Mr.V.Kannan, learned counsel takes notice for the respondents 1 to 3.

3. By consent of both parties, the appeal is taken up for final disposal at the admission stage itself.

4. The brief facts leading to the filing of this appeal are as follows:

The deceased Jeyaraj is the husband of the first claimant and the father of the second and third claimants. On 21.02.2018, at about 4.00 p.m., after buying tea for his office staffs, while returning to office, he was standing at the southern side mud portion of Madurai – Thondi Road, near Puliyadithamman Bus Stop, the driver of the Omni Car bearing Registration No.TN 38 Am 8439 came in a rash and negligent manner and dashed against the deceased. As a result, the deceased succumbed to injuries on 21.02.2018. Before the Tribunal, it is the case of the claimants that the deceased was working as Office Assistant



C.M.A.(MD).No.358 of 2023

in Primary Agricultural Co-operative Society and earned a sum of Rs.17,660/ per month. Hence, the claim petition has been filed before the Tribunal. The Insurance Company took a stand that there was no negligent driving on the part of the driver of the Omni Car and the accident took place on the part of the deceased, who is the sole reason for the accident.

5. Before the Tribunal, on the side of the petitioners, P.Ws.1 to 3 were examined and Exs.P1 to P8 were marked and Ex.X1 was marked and no oral and documentary evidence was marked on the side of the respondents.

6. The Tribunal, after considering the oral evidence of the eye witnesses, come to the conclusion that only the driver of the Omni Car drove the vehicle in a rash and negligent manner and dashed against the deceased and awarded a sum of Rs.25,52,580/- as compensation in the following manner:

S. No	Description	Amount awarded by the Tribunal
1.	Loss of dependency	Rs.23,87,580/-
2.	Loss of Estate	Rs.16,500/-
3.	Loss of Spousal consortium	Rs.44,000/-
4.	Loss of Parental Consortium (2 x 44,000)	Rs.88,000/-
5.	Funeral expenses	Rs.16,500/-
	Total	Rs.25,52,580/-



C.M.A.(MD).No.358 of 2023

WEB COPY

Challenging the same, the present appeal has been filed.

7. The learned counsel appearing for the appellant/Insurance Company would submit that the deceased was aged about 52 years at the time of death. Ex.X1 / Service Book of the deceased Jeyaraj clearly proved his date of birth as 11.04.1965. Therefore, on the date of accident, he was aged about 52 years, whereas the Tribunal took the age of the deceased as 50 years, as per the postmortem report. According to the learned counsel for the appellant, the same is not correct and the Tribunal has awarded compensation by applying multiplier '13' instead of '11'.

8. In the light of the submissions, now the point arise for consideration in this appeal is whether the Tribunal is right in fixing the age of the deceased as 52 and whether the quantum arrived by the Tribunal is proper.

9. This Court has perused the Ex.X1/Service Book of the deceased marked before the Tribunal and the same clearly indicate that the date of birth of the deceased as 11.04.1965. The Tribunal has not considered the same. On the other hand, the Tribunal took the age of the deceased as 50, on the basis of



C.M.A.(MD).No.358 of 2023

the postmortem certificate. The Tribunal ought not to have considered the postmortem certificate, particularly when the service record is available on record.

10. In such a view of the matter, fixing the age of the deceased as 50 is not proper and as per the service records, at the time of accident, the deceased was 52 years. Accordingly, the Tribunal ought to have adopted '11' multiplier instead of '13' multiplier. Besides, the Tribunal ought to have added 15% towards future prospects instead of 30%. Hence, this Court added 15% towards future prospects and deducted 1/3rd towards personal expenses and the loss of income would be Rs.13,540/- (Rs.17,660/- + Rs.2,649/- -Rs.6,769/-). Thus, the total loss of dependency comes to Rs.17,87,280/- (Rs.13,540/- x 12 x 11 = Rs. 17,87,280/-). The amount awarded under the other heads remains unaltered and the same are confirmed. Accordingly, the award amount is modified as follows:

S. No	Description	Amount awarded by the Tribunal
1.	Loss of dependency	Rs.17,87,280/-
2.	Loss of Estate	Rs.16,500/-
3.	Loss of Spousal consortium	Rs.44,000/-
4.	Loss of Parental Consortium (2 x 44,000)	Rs.88,000/-
5.	Funeral expenses	Rs.16,500/-
	Total	Rs.19,52,280/-



C.M.A.(MD).No.358 of 2023

WEB COPY

11. In the result, this Civil Miscellaneous Appeal is allowed. 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 permitted to withdraw a sum of Rs. 10,00,000/- and the claimants 2 and 3 are permitted to withdraw the remaining amount equally. No costs. Consequently, the connected Miscellaneous Petition is closed.

12.04.2023

akv

To
The Presiding Officer,
Motor Accident Claims Tribunal, Additional District Judge,
Additional District Court, Sivagangai.



WEB COPY



C.M.A.(MD).No.358 of 2023

N.SATHISH KUMAR,J.

akv

C.M.A.(MD).No.358 of 2023

12.04.2023