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C.M.A(MD)No.661 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.10.2023**

CORAM:

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

**C.M.A(MD)No.661 of 2019
and
C.M.P(MD)No.8121 of 2019**

The Divisional Manager,
National Insurance Co., Ltd.,
Kallakathira Building,
Main Road,
Pattinam Thitta Post,
Kerala State.

...Appellant/Respondent No.4

.VS.

1.Sunitha
2.Minor K.S.Maffin
3.Minor K.S.Taffin
4.Chellan
5.Chellamma

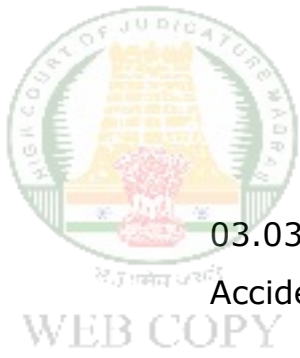
(Minor respondents 2 & 3 are
represented by their mother
and guardian 1st petitioner)

...Respondents/Petitioners

6.Ratheesh
7.Shajahan
8.A.Nizaruddin

...Respondents/Respondents 1-3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 against the fair and decretal order dated



C.M.A(MD)No.661 of 2019

03.03.2017 made in M.C.O.P.No.118 of 2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Nagercoil.

For Appellant	:Mr.S.Srinivasa Raghavan
For R1 to R5	:Mr.C.Kishore
For R6 to R8	: No appearance

JUDGMENT

[Judgment of the Court was made by **RMT.TEEKAA RAMAN.,J.**]

This Civil Miscellaneous Appeal is directed against the judgement and award made in M.C.O.P.No.118 of 2013, dated 03.03.2017, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Nagercoil and to set aside the judgment and award.

2. Challenging the award passed in M.C.O.P.No.118 of 2013 by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Nagercoil this appeal is filed on the point of contributory negligence and quantum.

3. The factum of the accident and the manner of accident are not in dispute.



C.M.A(MD)No.661 of 2019

4. The respondents 1 to 4, who are the claimants, filed the claim petition claiming compensation of Rs.20,00,000/- for the death of one Justin in the road transport accident on 28.01.2013.

5. To substantiate the factum of the accident as well as the manner of the accident, the occurrence witness P.W.2 was entered into the witness box and has narrated the incident. Though the appellant / Insurance Company filed counter affidavit raising the plea of contributory negligence, they have not adduced any oral and documentary evidence. The Tribunal, accepted the evidence of P.W. 2 coupled with Ex.P1 – FIR and Ex.P8 – Charge sheet, has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving by the driver of the vehicle insured with the appellant Insurance Company.

6. The learned counsel for the appellant / Insurance Company draws our attention to the answer in the cross-examination of P.W. 2. On a combined reading of the cross-examination of P.W.2 with chief-examination of P.W.1 and documentary evidence of Ex.P1 and Ex.P8, this Court comes to the conclusion that the finding of the Tribunal that the accident had taken place due to the rash and



C.M.A(MD)No.661 of 2019

negligent driving of the driver of the vehicle insured with the appellant is well merited and well considered and the same does not require any interference. Accordingly, the said plea raised by the learned counsel for the appellant is hereby stands negated.

7. On the point of quantum of compensation, the learned counsel for the appellant and the respondents 1 to 5 are heard.

8. The Tribunal, based upon the documentary evidence has come to the conclusion that the deceased was aged about 38 years and he was employed and earning Rs.7,500/- per month and following the decision of the Hon'ble Supreme Court in SARLA VERMA has fixed the future prospects at 50% and considering the number of dependants has deducted 1/4th, rightly applied the multiplier of 15 and hence, we do not find any excess of amount being awarded under the pecuniary loss to the deceased family.

9. On the point of conventional head, wife / first claimant is entitled to Rs.40,000/- for consortium and the love and affection awarded for the respondents 2 & 3 are hereby confirmed. The loss of love and affection awarded to the respondents 4 & 5 is also



C.M.A(MD)No.661 of 2019

confirmed and hence, the Civil Miscellaneous Appeal is partly allowed only to the limited extent. The award passed by the tribunal in all other aspects are confirmed.

10.The award of the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or modified or enhanced or granted
1.	Loss of income	Rs.15,18,750	Rs.15,18,750	confirmed
2.	Loss of Consortium to the wife/1 st claimant	Rs.1,00,000	Rs.40,000	modified
3.	Loss of Love and affection to the appellants claimants 2 & 3	Rs. 1,00,000/- each (Rs. 2,00,000)	Rs.2,00,000	confirmed
4.	Loss of love and affection to the 4 th claimant	Rs.25,000	Rs.25,000	confirmed
5.	Loss of love and affection to the 5 th claimant	Rs.50,000	Rs.50,000	confirmed
6.	For Medical expenses	Rs.40,000	Rs.40,000	confirmed
7.	For Transportation	Rs.10,000	Rs.10,000	Confirmed



C.M.A(MD)No.661 of 2019

8.	For funeral expenses	Rs.25,000	Rs.25,000	Confirmed
	Total	Rs.19,68,750	Rs. 19,08,750	reduced by Rs.60,000

11. The Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.19,68,750/-to Rs.19,08,750/- with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realization. The fourth respondent/appellant Insurance Company is directed to deposit the modified enhanced award amount with proportionate accrued interest and costs, less the award amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. The first claimant is entitled to a sum of Rs.7,20,000/-, the 4th claimant is entitled to Rs.88,750/-, 5th claimant is entitled to Rs.1,00,000/-. On such deposit being made, the major claimants are entitled to withdraw their share amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any by filing necessary application before the tribunal. The claimants 2 & 3 are entitled to Rs.5,00,000/- each. The Tribunal shall deposit the share of claimants 2 & 3, who are minor claimants,in a Fixed Deposit in any one of the Nationalised Bank, which shall be renewed periodically, till they attain majority. The first respondent/petitioner mother of the minors is



C.M.A(MD)No.661 of 2019

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permitted to withdraw the interest from the shares of her minor children, viz., claimants 2 & 3, once in three months from the bank directly. No costs.

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
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[T.K.R.,J.] [P.B.B.,J.]
19.10.2023

To

The Motor Accident Claims Tribunal
(Chief Judicial Magistrate),
Nagercoil.



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RMT.TEEKAA RAMAN,J.
AND
P.B.BALAJI,J.

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JUDGMENT MADE IN
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C.M.A(MD)No.661 of 2019

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