



C.M.A. (MD)No.1227 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1227 of 2022

and

C.M.P.(MD) No.12597 of 2022

The Branch Manager,
HDFC ERGO General Insurance Company Limited,
249, 3rd Floor, Rekha Towers,
Kamarajar Salai, Madurai – 625 009.

... Appellant/ 2nd Respondent

Vs.

1.C.Ramaiah

2.Rajamani

3.Jeyakumar

4.R.Vadivelkumar

... Respondents 1 to 4/ Petitioners

5.C.Anbuselvi

... 5th respondent/ 1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.07.2022 made in M.A.C.O.P.No.705 of 2016 on the file of the Motor Accident Claims Tribunal / Additional District Judge / Presiding Officer of Pudukottai.



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For Appellant : Mr.V.Sakthivel
For Respondents : Mr.G.Sridharan for R1 to R4
No Appearance for R5

JUDGMENT

Challenging the quantum fixed by the Motor Accident Claims Tribunal / Additional District Judge / Presiding Officer of Pudukottai, in M.A.C.O.P.No.705 of 2016 dated 29.07.2022, the appellant – Insurance Company has 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 deceased Suresh Kumar was a bachelor, who was aged about 30 years at the time of accident and while he was driving his car bearing Registration No.TN 55 AM 8458, on 26.10.2016 at 2.00 a.m., to attend his work at Madurai from Pudukkottai, proceeding from South to North direction, a Lorry bearing Registration TN-43-5486, owned by the first respondent, which was going in front of the Car, suddenly stopped without showing any signal. Therefore, the car



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driven by the deceased Suresh Kumar dashed against the backside of the Lorry, despite best efforts taken by him to stop the Car. As a result, the deceased succumbed to injuries and FIR has also been filed as against the driver of the Lorry. Hence, petitioners have filed the claim petition.

4. Before the Tribunal, on the side of the petitioners one witness was examined as P.W.1 and 26 documents were marked as Ex.P1 to P.26. On the side of the respondents, no witness was examined and three documents were marked as Ex.R1 to R3.

5. Considering the evidence adduced, the trial Court has fixed 35% contributory negligence on the part of the deceased, since he dashed the Lorry, which was proceeding in front of the Car and 65% was fixed on the driver of the Lorry.

6. The 2nd respondent – Insurance Company has filed this appeal only challenging the quantum of compensation awarded by the Tribunal. The Tribunal has added 50% towards future prospects instead of 40% and therefore, the order of the Tribunal is liable to be set aside.



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7. The learned counsel appearing for the petitioners 1 to 4 submitted that after analyzing the entire materials, the Tribunal has correctly awarded the compensation and therefore, this Appeal is liable to be dismissed.

8. 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 deceased was a bachelor and while awarding the compensation the Tribunal has added 50% towards future prospects instead of 40% and therefore, the same is liable to be modified. Similarly, the Tribunal deducted $\frac{1}{4}$ of the amount towards personal expenses, instead of 50% as per the judgment laid down by the Hon'ble Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TN MAC (1) SC and*** therefore, the same is liable to be interfered with. The Tribunal has correctly applied the multiplier '17', applicable to the age of the deceased, who was aged about 30 years. Further, the Tribunal has awarded a sum of Rs.15,000/- towards Loss of Estate, a sum of Rs.40,000/- towards loss of consortium and a sum of Rs.15,000/- towards Funeral and Transportation Expenses, which are reasonable. Therefore, if the monthly income is taken up for



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consideration as Rs.21,000/-, 40% of the future prospects added, the total income comes to Rs.29,400/- and if 50% is deducted, the monthly income would be Rs. 14,700/- and if the multiplier '17' is applied, the total loss of dependency would come to Rs.29,98,800/- (14,700 x 12 x 17). If a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- are awarded towards Loss of Estate, Loss of Consortium and Funeral and Transport Expenses, the total compensation comes to Rs.30,68,800/-. Out of the said amount, if 35% is deducted towards contributory negligence, the total amount of compensation would be Rs.19,94,720/-, which is rounded off to Rs.19,95,000/-

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the petitioners 1 to 4 are entitled to get a sum of Rs.19,95,000/- (Rupees Nineteen Lakhs and Ninety Five Thousand only) as compensation. Out of the said amount, the second petitioner being a mother is entitled to a sum of Rs.10 lakhs. The first petitioner, who is the father of the deceased is entitled to a sum of Rs.5,95,000/- and the petitioners 3 and 4, who are the brothers of the deceased are entitled to each Rs.2,00,000/-.



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11. The 2nd respondent – Insurance Company is directed to deposit the entire modified amount along with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit and costs within a period of one month from the date of receipt of a copy of this judgment, if not already deposited. The petitioners may approach the Tribunal for withdrawal of the said amount, for filing necessary application and if such an application is filed, the Tribunal shall pass orders for withdrawal, after deducting the Court fees, if any payable by them. No costs. Consequently, connected Miscellaneous Petition is closed.

10.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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- To
- 1.The Motor Accident Claims Tribunal,
Additional District Judge,
Presiding Officer of Pudukottai.
 - 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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