



C.M.A.(MD)No.24 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.24 of 2023
and
C.M.P.(MD)No.243 of 2023

The Manager,
Rep.by M/s.National Insurance Company Limitd,
[TP HUB], Sarvista Convent Building,
12-A, District Court Opposite,
YMR, YMR Patti,
Karunanithi Nagar,
Dindigul District.

...Appellant/3rd Respondent

Vs.

1.Bama
2.Vellaiyammal

Raman (died)

3.Senthilkumar
4.Venkatesan

...Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 12.08.2022 passed in M.C.O.P.No.74 of 2020 on the file of the Additional District Court, Karur.

For Appellant	: Mr.V.Sakthivel
For R1 & R2	: Mr.K.Sudalayandi
For R3 & R4	: No Appearance



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JUDGMENT

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Challenging the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.74 of 2020, dated 12.08.2022, the Insurance Company had come up with an 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:-

(i)On 15.09.2019 at about 01.30 p.m., while the deceased Sureshkumar was waiting in his motorcycle bearing Registration No.TN-64-L-6597 on the extreme left side of the road, the car bearing Registration No.TN-22-DE-9572 driven by the first respondent from east to west in a rash and negligent manner, hit against the two wheeler from the behind, while overtaking a vehicle. As a result, the deceased was thrown out of the vehicle and sustained head injuries and died on the way to the hospital.



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(ii)The first petitioner is the wife of the deceased. The second petitioner is the mother of the deceased and third petitioner is the father of the deceased. The deceased was aged about 30 years. He was a Tiles Layer by profession and he was earning a sum of Rs.20,000/- per month. Hence, the claimants have filed the claim petition seeking compensation.

(iii)The third respondent before the Tribunal took a stand that only the deceased was negligent in driving the vehicle and he suddenly crossed the road without observing the vehicle on road. The income of the deceased was also disputed.

4.Before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P9 were marked. On the side of the respondents R.W.1 was examined and Ex.R1 was marked.

5.Based on the materials, the tribunal found that only the driver of the offending vehicle was rash and negligent in driving the vehicle and caused the accident and awarded the following compensation:



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S.No.	Description	Amount
1.	Loss of future income	Rs.26,09,472/-
2.	Loss of consortium	Rs. 80,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
5.	Transport expenses	Rs. 10,000/-
	Total	Rs.27,29,472/-

6.Though several grounds were raised in this appeal, the main ground urged by the learned counsel for the appellant is that the Tribunal despite the fact that the age of the deceased is 38 years at the relevant point of time as per his license, took the age of the deceased as 32 years mainly on the basis of the postmortem certificate and adopted multiplier '16'. On this ground, the learned counsel for the appellant seeks modification of the award.

7.In the light of the above submission, now the point arise for consideration in this appeal is:

(1) Whether the Tribunal is right in fixing the age of the deceased as '32'?



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8.As rightly pointed out by the learned counsel for the appellant, the Tribunal infact had not considered Ex.R1, driving license of the deceased, wherein his date of birth is shown as 20.04.1981, which means, the age of the deceased at the time of accident is 38 years. When the age has been clearly reflected in the admitted document, the Tribunal ought to have considered the same. Instead, the Tribunal had relied upon the postmortem certificate and fixed the age of the deceased at 32 years. The approach of the Tribunal is not correct.

9.Accordingly, the fixation of the age of the deceased at '32' adopting the multiplier at '16' by the Tribunal is set aside and the age of the deceased is fixed at '38' and multiplier is fixed at '15'. The fixation of notional income of the deceased on the basis of the cost index theory does not require any interference. Hence, the compensation awarded by the Tribunal under other heads are hereby confirmed. In the result, the claimants are entitled to the compensation as follows:

S.No.	Description	Amount
1.	Loss of future income	Rs.24,46,380/-
2.	Loss of consortium	Rs. 80,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
5.	Transport expenses	Rs. 10,000/-
	Total	Rs.25,66,380/-



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10. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is hereby reduced as stated above.

11. The Insurance company is directed to deposit the compensation amount i.e., Rs.25,66,380/- (Twenty Five Lakhs Sixty Six Thousand Three Hundred and Eighty only) as modified by this Court from the date of petition till the date of realization to the credit of M.C.O.P.No.74 of 2020, on the file of the Motor Accident Claims Tribunal/Additional District Court, Karur within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants are permitted to withdraw the same as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Motor Accident Claims Tribunal/
Additional District Court, Karur.
- 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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