



C.M.A.(MD).Nos.342 to 345 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).Nos.342 to 345 of 2023

C.M.A.(MD).No.342 of 2023

Suganya

... Appellant

Vs.

1.Sadiq

2.United India Insurance Company Limited
through its Branch Manager,
No.50/1, S.N.High Road,
First Floor,
Tirunelveli.

3.Sankari

4.The New India Assurance Company Limited
through its Divisional Manager,
2nd Floor, Jeevan Deep Building,
No.6, Parliament Street,
New Delhi.

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.790 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tirunelveli, dated 29.04.2013.

For Appellant

: Mr.T.Selvakumaran

For R2

: Mr.V.J.Kumaravel

C.M.A.(MD).No.343 of 2023

1.Devaraj

2.Muthukumar

3.Suganya



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4.Minor.Sarnya
5.Minor Madhubala
6.Minor Satheesh
7.Minor Saraswathi
(Minor petitioners through their father
and next guardian 1st petitioner herein.)

... Appellants

Vs.

1.Sadiq

2.United India Insurance Company Limited
through its Branch Manager,
No.50/1, S.N.High Road,
First Floor,
Tirunelveli.

3.Sankari

4.The New India Assurance Company Limited,
through its Divisional Manager,
2nd Floor, Jeevan Deep Building,
No.6, Parliament Street,
New Delhi.

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.791 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tirunelveli, dated 29.04.2013.

For Appellant	: Mr.T.Selvakumaran
For R2	: Mr.V.J.Kumaravel

C.M.A.(MD).No.344 of 2023

1.Nagarajan
2.Lakshmi



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3.Minor Rajeswari
(Minor petitioners through their father
and next guardian 1st petitioner herein.)

... Appellants

Vs.

- 1.Sadiq
- 2.United India Insurance Company Limited
through its Branch Manager,
No.50/1, S.N.High Road,
First Floor,
Tirunelveli.
- 3.Sankari
- 4.The New India Assurance Company Limited,
through its Divisional Manager,
2nd Floor, Jeevan Deep Building,
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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.792 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tirunelveli, dated 29.04.2013.

For Appellant	: Mr.T.Selvakumaran
For R2	: Mr.V.J.Kumaravel

C.M.A.(MD).No.345 of 2023

- 1.Anbalagan
- 2.Lakshmi
- 3.Minor Sonia



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- 4.Minor Sudakar
5.Minor Sumithra
6.Minor Suresh

(Minor petitioners through their father
and next guardian 1st petitioner herein.)

... Appellants

Vs.

- 1.Sadiq
- 2.United India Insurance Company Limited
through its Branch Manager,
No.50/1, S.N.High Road,
First Floor,
Tirunelveli.
- 3.Sankari
- 4.The New India Assurance Company Limited,
through its Divisional Manager,
2nd Floor, Jeevan Deep Building,
No.6, Parliament Street,
New Delhi.

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.988 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Tirunelveli, dated 29.04.2013.

For Appellant : Mr.T.Selvakumaran
For R2 : Mr.V.J.Kumaravel



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COMMON JUDGMENT

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Since the Tribunal has passed the award in common judgment, this Court is also inclined to dispose of these appeals in a common judgment.

2. These four appeals have been filed by the claimants for enhancement of compensation. C.M.A.(MD).No.342 of 2023 has been filed by the injured and the other appeals have been filed by the legal heirs of the deceased in the accident took place on 01.06.2010 at about 8.15 a.m. The appellant in C.M.A. (MD).No.342 of 2023 and the deceased (three members) were travelling in an Omni Van bearing Registration No.TN AY 0266 owned by the third respondent insured with the fourth respondent. When the Van entered into the service road, a Force Van bearing Registration No.TN 72 AD 1153 came in a rash and negligent manner and dashed against the Omni Van. As a result, the Omni Van pushed behind and crushed into pieces and three of them died in the accident and the appellant in C.M.A.(MD).No.342 of 2023 has sustained injuries. Hence, the compensation has been claimed by the injured as well as the legal heirs of the deceased.

3. Before the Tribunal, in all the cases, on the side of the petitioners, P.Ws.1 to 5 were examined and Exs.P1 to P19 were marked and on the side of



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the respondents, R.Ws.1 to 3 were examined and Exs.R1 to R3 were marked.

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4. The Tribunal, after considering the entire evidence, has fixed a sum of Rs.90,000/- for the injury sustained by the appellant in C.M.A.(MD).No.342 of 2023. The Tribunal, while awarding compensation, has taken a sum of Rs. 1,000/- for 1% disability. Similarly, in M.C.O.P.No.791 of 2010, the Tribunal has fixed the notional income of the deceased at Rs.4,500/- and deducted 1/5th share for her personal expenses and granted a sum of Rs.7,05,000/- as compensation. In M.C.O.P.No.792 of 2010, the Tribunal has also fixed the notional income of the deceased at Rs.4,500/- and awarded a sum of Rs. 3,91,000/- as compensation and in M.C.O.P.No.988 of 2010, the Tribunal has awarded a sum of Rs.7,07,000/- as compensation. Not satisfied with the quantum fixed by the Tribunal, these appeals have been filed.

5. As far as the negligence aspect is concerned, there is no challenge by the Insurance Company. The Tribunal has found that only the driver of the offending vehicle drove the vehicle in a rash and negligent manner and dashed against the Omni Van. Therefore, now the point for consideration in this appeal is whether the quantum fixed by the Tribunal is proper?



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6. As far as the M.C.O.P.No.790 of 2010 is concerned, the injured has sustained 35% partial permanent disability and the Tribunal has taken a sum of Rs.2,000/- for 1% disability and awarded a sum of Rs.10,000/- for pain and suffering and Rs.5,000/- for extra nourishment and awarded a sum of Rs. 90,000/- as compensation.

7. This Court is of the view that at the relevant point of time, this Court has taken a view that for 1% of disability Rs.3,000/- to be awarded. Accordingly, the amount is enhanced to Rs.3,000/- from Rs.1,000/- ($\text{Rs.3,000/-} \times 35\% = \text{Rs.1,05,000/-}$) and for pain and suffering, another Rs.10,000/- is added ($\text{Rs.10,000/-} + \text{Rs.10,000/-} = \text{Rs.20,000/-}$) and the amount awarded under the other heads remains unaltered and the same are confirmed. Thus, the total compensation comes around Rs.1,35,000/- in the following manner:

S. No	Description	Modified Award Amount
1.	For disability ($\text{Rs.3,000/-} \times 35$)	Rs.1,05,000/-
2.	For Pain and Suffering	Rs.20,000/-
3.	For Transportation	Rs.5,000/-
4.	For Extra Nourishment	Rs.5,000/-
	Total	Rs.1,35,000/-



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8. As far as the M.C.O.P.No.792 of 2010 is concerned, the Tribunal has awarded a sum of Rs.3,91,000/-. The deceased is a bachelor, aged about 24 years and his profession is a driver and the same was also spoken by the witnesses. However, the Tribunal has fixed the notional income of the deceased at Rs.4,500/- and deducted 50% towards personal expenses.

9. This Court is of the view that the accident is occurred in the year 2010 and the driver by profession would have been earned more than Rs.6,000/-. Hence, this Court is inclined to fix the notional income of the deceased at Rs. 6,500/- and considering the age of the deceased, added 40% towards future prospects (Rs.6,500/- + Rs.2,600/- = Rs.9,100/-) and after deducting 50% towards personal expenses, the total monthly income comes around Rs.4,550/- and the same is multiplied by '18'. Accordingly, the loss of dependency is enhanced to Rs.9,82,800/- (Rs.4,550/- x 12 x 18 = Rs.9,82,800/-) and the amount awarded under the other heads remains unaltered and the same are confirmed. Thus, the total compensation comes around **Rs.10,22,800/-** in the following manner:



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S. No	Description	Modified Award Amount
1.	For loss of dependency	Rs.9,82,800/-
2.	For love and affection	Rs.30,000/-
3.	For Extra Nourishment	Rs.10,000/-
	Total	Rs.10,22,800/-

10. As far as the M.C.O.P.No.988 of 2010 is concerned, the deceased is aged about 35 years at the time of accident and her occupation is Beedi Rolling. The Tribunal has fixed the notional income of the deceased at Rs.4,500/-. Even assuming that the deceased has no proper income, at the same time, she is also a home maker, that cannot be ignored altogether. Hence, this Court has fixed the notional income of the deceased at Rs.6,500/- and added 40% towards future prospects (Rs.6,500/- + Rs.2,600/- = Rs.9,100/-) and after deducting 50% towards personal expenses, the total monthly income comes around Rs.4,550/- and the same is multiplied by '18'. Accordingly, the loss of dependency is enhanced to Rs.9,82,800/- (Rs.4,550/- x 12 x 18 = Rs.9,82,800/-) and the amount awarded under the other heads remains unaltered and the same are confirmed. Thus, the total compensation comes around **Rs.10,82,710/-** in the following manner:



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S. No	Description	Modified Award Amount
1.	For loss of dependency	Rs.9,82,800/-
2.	For loss of consortium	Rs.20,000/-
3.	For love and affection	Rs.60,000/-
4.	For funeral expenses	Rs.10,000/-
5.	For medical bills	Rs.9,910/-
	Total	Rs.10,82,710/-

11. As far as the M.C.O.P.No.791 of 2010 is concerned, the deceased is aged about 40 years at the time of accident and earning a sum of Rs.8,000/- through agriculture. However, the Tribunal has fixed the notional income of the deceased at Rs.4,500/-. Hence, this Court has fixed the notional income of the deceased at Rs.6,500/- and added 30% towards future prospects (Rs.6,500/- + Rs.1,950/- = Rs.8,450/-) and after deducting 1/5th share towards personal expenses, the monthly income comes around Rs.6760/- and the same is multiplied by '14'. Accordingly, the total loss of dependency comes to Rs. 11,35,680/- (Rs.6,760/- x 12 x 14 = Rs.11,35,680/-) and the amount awarded under the other heads remains unaltered and the same are confirmed. Thus, the total compensation comes around Rs.12,35,680/- in the following manner:



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S. No	Description	Modified Award Amount
1.	Loss of dependency	Rs.11,35,680/-
2.	Loss of consortium	Rs.20,000/-
3.	For love and affection	Rs.70,000/-
4.	For funeral expenses	Rs.10,000/-
	Total	Rs.12,35,680/-

12. In the result, these Civil Miscellaneous Appeals are allowed. The Insurance Companies/the respondents 2 and 4 are directed to deposit the entire award amount with 7.5% interest within a period of four weeks from the date of receipt of a copy of this order. The petitioners in M.C.O.P.No.792 of 2010 are not entitled to the interest for the delay of 1090 days in filing the restoration petition. On such deposit, the first claimant in M.C.O.P.No.792 of 2010 is entitled to Rs.3,00,000/- and the 2 and 3 are entitled to Rs.3,61,400/- each. The first claimant in M.C.O.P.No.988 of 2010 is entitled to Rs.1,42,710/- and the claimants 2 to 6 are entitled to Rs.1,88,000/- each. The first claimant in M.C.O.P.No.791 of 2010 is entitled to Rs.2,35,680/- and the claimants 2 to 7 are equally entitled to the remaining amount. In respect of the minor claimants, the amount shall be deposited in a Nationalised Bank till they attain majority and the guardian of the minor claimants are permitted to withdraw the interest once in three months. No costs.



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27.04.2023

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To
The Motor Accident Claims Tribunal,
II Additional District Court,
Tirunelveli.



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N.SATHISH KUMAR.J.,

These Civil Miscellaneous Appeals were disposed of by common judgement dated 27.04.2023 allowing the appeals.

2. They are again listed today under the caption “For Being Mentioned” at the instance of the learned counsel for the appellants to set right the mistake crept in the judgement insofar as it relates to C.M.A.(MD) No.345 of 2023 with regard to percentage of deduction from out of the monthly income towards personal expenses of the deceased which he would have spent had she been alive.

3. Heard both sides.

4. The deceased was admittedly a married woman. The appellants are her legal heirs of whom the 1st appellant is the husband and other appellants are the children of the deceased. Thus, according to the learned counsel for the appellants, the amount to be deducted towards personal expenses of the deceased has to be $\frac{1}{4}^{\text{th}}$ and instead of that by mistake, 50% was ordered to be deducted as if the deceased was a spinster/unmarried which has to be modified as $\frac{1}{4}^{\text{th}}$ towards personal expenses. Further, the learned counsel fairly admitted that there is also a mistake in applying the multiplier. In the tribunal, multiplier '15' was applied considering the age of the deceased and therefore, instead of



18, multiplier '15' has to be applied.

5. The said factual aspects are not disputed by the learned counsel for the 2nd respondent.

6. This court has perused the common judgement. Three other Civil Miscellaneous Appeals were disposed of along with C.M.A.(MD) No.345 of 2023. There are admittedly mistakes in applying deduction towards personal expenses as well as in the multiplier adopted as pointed out by the learned counsel for the appellants.

4. Accordingly, the following corrections in the common judgement dated 27.04.2023 relating to C.M.A.(MD) No.345 of 2023 shall be made as indicated below:-

(i) In para 10, at 7th line in the place of “50%”, the word “**1/4th**” shall be substituted.

(ii) In para 10, at 8th line in the place of “Rs.4,550/-”, the amount of “**Rs. 6,825/-**” shall be substituted.

(iii) In para 10, at 10th line, in the place of the words “(Rs.4,550/- x 12 x 18 = Rs.9,82,800/-”, the figures “**(Rs,6,825/- x 12 x 15 = 12,28,500/-)**” shall be typed.

(iv) the total compensation of “Rs.10,82,710/- mentioned at 12th line in para 10 has to be corrected as “**Rs.13,28,410/-**” and in the tabulation under the



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column “Modified Award Amount” as against the Sl.No.1 “For Loss of Dependency, in the place of figure “Rs.9,82,800/-, the figure “**Rs.12,28,500/-**” shall be substituted and as against the total column, in the place of “Rs. 10,82,710/-” the figure “**Rs.13,28,410/-**” shall be substituted.

(v) correspondingly, in para 12 of the judgement, in the place of the words “The first claimant in M.C.O.P.No.988 of 2010 is entitled to Rs. 1,42,710/- and the claimants 2 to 6 are entitled to entitled to Rs.1,88,000/- each” the following words “**The first claimant in M.C.O.P.No.988 of 2010 is entitled to Rs.1,60,010/- and the claimants 2 to 6 are entitled to Rs. 2,33,680/-**” shall be substituted.

The Registry is directed to carry out amendment in the original judgement as indicated above and issue certified copies of the judgement to the parties concerned accordingly.

13..09..2023

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N.SATHISH KUMAR.J.,

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