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C.M.A.No.2183 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI**

**C.M.A.No.2183 of 2024
and
C.M.P.No.16991 of 2024**

The Oriental Insurance Co.Ltd.,
No.115, Prakasam Salai,
Broadway,
Chennai - 600 108.

..Appellant

Vs.

1. C.Elumalai,
S/o Chinna Gounder
2. Minor Suriya,
S/o Elumalai
(Minor rep. by his father and next friend
C.Elumalai)
Both are residing at No.15, 5th Street,
C.L.C.Line, Chrompet, Chennai - 600 044
3. G.Veeraraj,
S/o Gurusamy,
No.3/8, Kanjampatti, Chatrapatti,
Sivakasi Taluk,
Virudhunagar District,
Pin 626 128.

..Respondents



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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in M.C.O.P.No.695 of 2015 on the file of Motor Accidents Claims Tribunal (Special Sub Court No.1 Motor Accidents Claims Petitions) Small Causes Court, Chennai, dated 26.09.2023.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.S.Parthasarathy

J U D G M E N T

(The order of the Court was made by Mrs.J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the award dated 26.09.2023 passed in MCOP.No. 695 of 2015 on the file of Motor Accidents Claims Tribunal (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai.

2. The appellant/ Insurance Company is the 2nd respondent in M.C.O.P.No.695 of 2015 on the file of Motor Accidents Claims Tribunal (Special Sub Court No.1 Motor Accidents Claims Petitions) Small Causes Court, Chennai. The 1st respondent is the driver of the vehicle and he is



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set *exparte* before the Tribunal. The respondents 1 & 2/claimants had filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Mrs.E.Selvi, who died in the accident that took place on 10.12.2013.

3. According to the claimants, on the date of accident, i.e., on 10.12.2013 at about 05.15 hours, while the deceased E.Selvi was travelling as a passenger in a Maruti Car bearing Reg.No.TN-59-M-9988 from Trichy to Chennai at G.S.T. Road in Tindivanam Bye-pass Road on the way to Karnavoor Road in Tindivanam Police Station Limit, Villupurm District, a lorry bearing Reg.No.TN-67-AP-9302 was parked in the middle of the road without the parking light and the Maruthi Car hit behind the lorry. In the said accident, the deceased sustained fatal injuries and died on the spot. Therefore, the respondents 1 & 2 filed the claim petition claiming compensation as against the driver-in-charge of the vehicle as well as the appellant/Insurance Company.

4. The appellant/Insurance company filed counter statement denying the averments made in the claim petition. The appellant denied



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the alleged manner of accident, the nature of injuries, age of the deceased employment and income of the deceased. The appellant states that the amount claimed is also excessive. The appellant Insurance Corporation also denied the validity of vehicle records, driving licence of the driver and insurance coverage alleged to have been given by the respondents 1 & 2. Hence, prayed to dismiss the claim petition.

5. Heard the learned counsel the appellant Insurance Company, learned counsel for the respondents 1 & 2 and perused the materials available on record.

6. The appellant Insurance Company has challenged the Award stating that the Tribunal, without properly considering the evidence, had fastened the liability on the driver of the lorry insured with the appellant Insurance Company and fixed excessive sum of Rs.8,500/- as notional monthly income of the deceased.

7. The Tribunal, under the impugned award, directed the Insurance Company to pay the claimants, a compensation of



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Rs.18,28,600/-(Rupees Eighteen Lakhs Twenty Eight Thousand Six

Hundred only) as detailed hereunder :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Loss of dependency Rs.11,900(8,500+3400)x12x18	17,13,600
Loss of consortium	80,000
Loss of estate	15,000
Funeral expenses	15,000
Transport charges	5,000
Total	18,28,600

8. As regards the liability is concerned, from the oral evidence of P.Ws.1 and 2 and the documentary evidence of Exs.P1, P10 and P11, and since there is also no sufficient contra evidence, the Tribunal had come to the conclusion that the accident had occurred due to the negligence of the driver of lorry bearing Reg.No.TN-67-AP-9302, with which, we are not inclined to interfere with.

9. Insofar as the monthly income of the deceased is concerned, the Tribunal has fixed the notional income of the deceased as Rs.8,500/- per month and by adding 40% future prospects as per judgment of *National*



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Insurance Company Ltd., Vs. Pranay Sethi reported in (2018) 1 LW 331, has fixed the notional income as Rs.11,900/- per month. It is stated by the claimants that the deceased E.Selvi was working as a teacher and she had studied B.Sc., B.Ed. Except the educational qualification certificates, the claimants have not produced the salary certificate of the deceased to prove that she was earning Rs.15,000/- per month at the time of accident as claimed by them in the claim petition. The deceased was a teacher in a private school at the time of accident, i.e., in the year 2013. However, the Tribunal had fixed the notional income as Rs.8,500/- p.m., which we find that the same is on the higher side. Therefore, we fix the monthly income of the deceased as Rs.7,500/- and by adding 40% future prospects as per judgment of *National Insurance Company Ltd., Vs. Pranay Sethi reported in (2018) 1 LW 331*, has fixed the notional income as Rs.10,500/- per month. Thus, the annual income of the deceased is fixed at Rs.1,26,000/-. Further, deducting 1/3rd amount as per *Sarla verma &Ors vs. Delhi Transport Corporation & Anr. (2009) 4 MLJ (SC) 997*, the balance (Rs.1,26,000 - Rs.42,000) is Rs.84,000/- and the same is considered to be the contribution to the dependents of the family per annum. Since the age of the deceased was 23 at the time of



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death, the multiplier will be 18. Therefore, the total loss of dependency would be Rs.15,12,000/- (84,000 x 18).

10. We are of the view that the amounts awarded by the Tribunal towards funeral expenses, transportation, loss of consortium and loss of estate are just and reasonable and hence, the same are hereby confirmed.

11. In the light of the above, the compensation awarded by the Tribunal is hereby modified as under:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency Rs.10500(7500+3000)/ 3 x12x18	17,13,600	15,12,000	Reduced
2.	Loss towards consortium	80,000	80,000	Confirmed
4.	Loss of Estate	15,000	15,000	Confirmed
5.	Funeral Expenses	15,000	15,000	Confirmed
6.	Transport charges	5,000	5,000	Confirmed
	Total	Rs.18,28,600	Rs.16,27,000/-	Reduced by Rs.2,01,600/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,28,600/- is



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hereby reduced to Rs.16,27,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.695 of 2015 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.1 Motor Accidents Claims Petitions) Small Causes Court, Chennai. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The 1st claimant, husband of the deceased is entitled to Rs.10,27,000/- (Rupees Ten Lakhs Twenty Seven Thousand only) and the 2nd claimant is entitled to Rs.6,00,000/- (Rupees Six Lakhs only).

13. Insofar as the share of the 2nd respondent / minor claimant is concerned, the same shall be deposited in a Fixed deposit in any one of the Nationalized Banks, till he attains the age of majority and the interest



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accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. If the second respondent / minor claimant has attained the age of majority, it is open to him to file a formal petition before the Tribunal to get his share of apportionment. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
vsi

(J.N.B,J.) (R.K.M., J.)
08.08.2024

To

The Motor Accidents Claims Tribunal
(Special Sub Court No.1
Motor Accidents Claims Petitions)
Small Causes Court,
Chennai

J. NISHA BANU, J.
and
R.KALAIMATHI,J.



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