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C.M.A.Nos.2211 & 2362 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM

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

**C.M.A.Nos.2211 & 2362 of 2024
and
C.M.P.No.19543 of 2023**

C.M.A.No.2211 of 2024

Reliance General Insurance Company Limited
Having Office at Reliance Centre,
South Wing, 4th Floor,
Off Western Express Highway,
Santacruz, East Mumbai,
Maharashtra State – 400 055

..Appellant

Vs.

1. Selvi
W/o Late Kathirvel
2. Minor K.Kamali,
D/o Late Kathirvel
3. Minor K.Gokul,
S/o Late Kathirvel
(Minors 2nd & 3rd respondents rep.
by mother 1st respondent Selvi)
4. Kuppammal,
W/o Selvaraj



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5. V.Selvaraj,
S/o Vellaiyan

6. S.Sakthivel
S/o Selvaraj

7. R.Girija,
W/o Ramachandran

8. T.Tharuman ..Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor vehicles Act, 1988 against the judgment and decree dated 02.01.2024 passed in M.C.O.P.No.825 of 2021 on the file of Motor Accidents Claims Tribunal, (Special District Judge) (To deal with MCOP cases), Erode.

For Appellant : Mr.P.Suresh Srinivasan

For Respondents : Mr.R.Nalliyappan for R1 to R5

C.M.A.No.2362 of 2024

1. Selvi
W/o Late Kathirvel

2. Minor K.Kamali,
D/o Late Kathirvel

3. Minor K.Gokul,
S/o Late Kathirvel
(Minors 2nd & 3rd respondents rep.
by mother 1st respondent Selvi)

4. Kuppammal,



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W/o Selvaraj

5. V.Selvaraj,
S/o Vellaiyan

..Appellants

Vs.

1. S.Sakthivel
S/o Selvaraj

2. R.Girija,
W/o Ramachandran

3. T.Tharuman

4. The Reliance General Insurance Company Limited
Reliance Centre,
South Wing, 4th Floor,
Off Western Express Highway,
Santacruz, East Mumbai,
Maharashtra State – 400 0551.

..Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor vehicles Act, 1988 against the order dated 02.01.2024 passed in M.C.O.P.No.825 of 2021 on the file of Motor Accidents Claims Tribunal, (Special District Judge) (To deal with MCOP cases), Erode.



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For Appellants : Mr.R.Nalliyappan

For Respondents : Mr.P.Suresh Srinivasan for R4
R1 to R3-exparte

COMMON JUDGMENT

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

C.M.A.No.2211 of 2024 has been preferred by the Insurance Company, challenging the judgment and decree 02.01.2024 passed in M.C.O.P.No.825 of 2021 on the file of Motor Accidents Claims Tribunal, (Special District Judge) (To deal with MCOP cases), Erode. C.M.A.No.2362 of 2024 has been preferred by the claimants to enhance the award amount.

2. For the sake convenience, the Insurance Company is called as Appellant and the claimants are called as respondents 1 to 5.

3. The respondents 1 to 5/claimants have filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of Mr.Kathirvel, who died in the accident that took place on 19.09.2021. The 6th respondent is the driver of the lorry, the 7th respondent is the present owner and the 8th respondent is the previous owner of the lorry.



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The respondents 6 to 8/respondents 1 to 3 therein remained absent and set exparte before the Tribunal.

4. The 1st respondent is the wife, the 2nd & 3rd respondents are the children and the 4th and 5th respondents are the parents of the deceased. According to the claimants, the accident occurred on 19.09.2021 at about 8.30 a.m. when the deceased Kathirvel stopped TVS 50 moped at extreme side of mud road on Elumathur to Poondurai road junction in front of Venkatesh house. He was seated in the moped along with his minor son, 3rd respondent herein. At that time, a lorry bearing Regn.No.TN-24-J-9184 came from south to north direction, driven by the 6th respondent in a rash and negligent manner and dashed on the deceased Kathirvel's stationed moped. Due to which, the Kathirvel and the 3rd respondent fell down on the road and sustained multiple grievous injuries all over the body. Immediately, Kathirvel was taken to the hospital but on the very next day i.e., on 20.09.2021, he succumbed to the injuries.

5. The deceased was aged about 37 years and was hale and healthy



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at the time of accident. He was doing two wheeler mechanic work, auto consultation work and also doing real estate brokerage. The deceased was earning not less than Rs.25,000/- to Rs.30,000/- per month. He is the only earning member of his family. Both the minor children are deaf and dumb by birth. The deceased contributed his entire income for maintaining his family after meeting meagre expenses towards his personal expenses. The claimants claimed a sum of Rs.50,00,000/- as compensation and the Tribunal, awarded a sum of Rs.31,65,300/-. Challenging the award of the Tribunal, the appellant/ Insurance Company has filed C.M.A.No.2211 of 2024 and the claimants have filed C.M.A.No.2362 of 2024 for enhancement of compensation.

6. Heard the learned counsel the appellant Insurance Company, learned counsel for the respondents 1 to 5/claimants and perused the materials available on record.

7. Though the learned counsel for the appellant Insurance Company has challenged the liability and quantum of the award passed by the Tribunal, now he confines his argument only in respect to the



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amount of Rs.50,000/- awarded under the head of 'pain and sufferings'.

Learned counsel would state that already an excess amount of Rs.48,400/- towards of loss of spousal consortium, Rs.96,800/- towards parental consortium and Rs.96,800/- towards filial consortium was awarded, therefore, a sum of Rs.50,000/- ought not to have been awarded by the Tribunal. Hence, the learned counsel would state that a sum of Rs.50,000/- awarded towards 'pain and sufferings' may be deleted.

8. The Tribunal, under the impugned award, directed the Insurance Company to pay the claimants, a compensation of Rs.31,65,300/-(Rupees Thirty One Lakhs, Sixty Five Thousand Three Hundred only) as detailed hereunder :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Loss of dependency	28,35,000
Loss of spousal consortium	48,400
Loss of parental consortium	96,800
Loss of filial consortium	96,800
Funeral expenses	18,150
Loss of Estate	18,150
Damages to clothing & articles	2,000
Pain and sufferings	50,000



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Total	31,65,300

9. Considering the submissions made by the learned counsel for the appellant/Insurance Company, we are of the view that the amount of Rs.2,42,000/- has already been awarded under different heads of consortium and therefore, the award of Rs.50,000/- need not be granted under the head 'pain and sufferings'.

10. Except modifying the award in respect of the amount awarded under the head 'pain and sufferings', we are of the view that the amount awarded by the Tribunal in all other heads need not be interfered with and hence, the same is 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
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1.	Loss of dependency	28,35,000	28,35,000	Confirmed
2.	Loss of spousal consortium	48,400	48,400	Confirmed
3.	Loss of parental consortium	96,800	96,800	Confirmed
4.	Loss of filial consortium	96,800	96,800	Confirmed
5.	Funeral expenses	18,150	18,150	Confirmed
6.	Loss of Estate	18,150	18,150	Confirmed
7.	Damages to clothing & articles	2,000	2,000	Confirmed
8.	Pain and sufferings	50,000	...	deleted
	Total	31,65,300	31,15,300	Reduced

12. In view of the above, we are not inclined to entertain the appeal filed by the claimants.

13. In the result, C.M.A.No.2211 of 2024 is partly allowed and the compensation awarded by the Tribunal at Rs.31,65,300/- is hereby reduced to Rs.31,15,300/- (Rupees Thirty One Lakhs Fifteen Thousand Three Hundred only) 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



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judgment, in the manner as directed by the Tribunal. In all other aspects, the award passed by the Tribunal is confirmed. C.M.A.No.2362 of 2024 is dismissed. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
vsi

(J.N.B,J.) (R.K.M., J.)
06.09.2024

To

The Motor Accidents Claims Tribunal,
(Special District Judge), Erode

J. NISHA BANU, J.
and



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R.KALAIMATHI,J.

vsi

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