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CMA.No.2176 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.2176 of 2024

Sakthi

... Appellant

VS.

1. Lakshmi

2. Nandhini

3. Vidhyasakar

4. United India Insurance Company Limited,
Rep. by its Branch Manager
Door No.26-3-2054/1,
1st Floor, Savithri Nagar,
Vedayapalem, Nellore - 524 004.

5. Saravanan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 22.03.2024 in M.C.O.P.No.462/2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.S.P.Yuvaraj

For R2 : Mrs.R.Rathna Thara



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J U D G M E N T

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Krishnagiri in M.C.O.P.No.462/2019, the appellant/claimant has filed the present appeal. The respondent 1, 2 and 5 are also the legal heirs of the deceased Madhaiyan.

2. The claim petition was filed by the appellant (herein) under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50,00,000/- before MACT, Krishnagiri for the death of his father Madhaiyan in a road accident which happened on 15.05.2018.

3. The brief case of the Appellant / claimant is as follows :

On 15.05.2018, Madhaiyan (deceased) aged 55 years was riding a two wheeler bearing registration number TN-39-AF-0424 on Vaniyampadi - Bargur National Highways along with his 2nd wife (Ananthavalli). When they were nearing a wholesale shop in coconuts on Bargur National Highways, a Mahindra XUV 500 car bearing Registration number TN-02-BA-6333 belonging to the 1st respondent came in the opposite direction and hit the two wheeler, as a result of



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which, Madhaiyan fell down and died on spot.

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4. According to the claimant, the rash and negligent driving of the driver of the car bearing Registration number TN-02-BA-6333 was the cause of the accident and that since the said vehicle was insured with the fourth respondent, United India Insurance Company Limited, the third and fourth respondents (owner and his insurer) are jointly and severally liable to pay compensation to him.

5. The Tribunal, after analysing the evidence on record, awarded a compensation of Rs.11,89,100/- to the appellant and respondents 1, 2 and 5. The Tribunal further held that since the deceased was not having a valid driving licence on the date of accident, deducted 15% towards contributory negligence. Thus, after deducting 15% towards contributory negligence, the Tribunal awarded a sum of Rs.10,10,735/- together with interest at 7.5% per annum to the claimants vide its orders dated 22.03.2024.

6. Aggrieved over the orders passed by the Tribunal, the Appellant / claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, seeking enhancement of compensation amount and



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also to set aside the contributory negligence fastened on the deceased.

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7. Heard Mr.S.P.Yuvaraj, learned counsel appearing for the Appellant and Mrs.R.Rathna Thara, learned counsel for the second respondent.

8. Mr.S.P.Yuvaraj, learned counsel for the Appellant contended that when the eyewitness account is clear on the aspect of negligence on the part of the driver of the car bearing registration number TN-02-BA-6333, the Tribunal had wrongly fixed 15% contributory negligence on the part of the deceased.

9. Per contra, Mrs.R.Rathna Thara, learned counsel appearing for the 4th respondent, contended that the Tribunal had analysed the facts of the case in the right perspective and fixed 15% contributory negligence on the deceased and therefore it does not warrant any interference by this Court.

10. It is seen from the records that the eyewitness to the occurrence has been examined as P.W.2. He has deposed that the



deceased Madhaiyan was riding the two wheeler on the left side of the road following traffic rules and regulations. However, the Tribunal had fixed 15% towards contributory negligence on the part of the deceased on the ground that he was not possessing a valid driving license on the date of accident. The manner of accident shows that the driver of the car was rash and negligent in driving his vehicle. Therefore, negligence fixed on the part of the deceased Madhaiyan is set aside. According to the appellant, his father was aged 55 years and was earning a sum of Rs.30,000/- p.m. However, no income proof was filed. Considering the year of accident, the notional monthly income of the deceased is fixed as Rs.12,000/-. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in **2017 (2) TNMAC 601**, 10 % is added towards future prospects of the deceased. Since there are four dependents (the appellant, and Respondents 1, 2 and 5), 1/4th of the deceased's income should be deducted towards his personal expenses. The deceased was aged 55 years on the date of the accident and the proper multiplier to be adopted in the instant case is 11 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in **(2009) 6 SCC 121**.



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WEB CC Calculation :

Notional Income = Rs.12,000/-

after adding 10% Future Prospects = Rs.13,200/-

After 1/4 deduction = Rs.9,900/-

Loss of dependency :

= Rs.9,900/- x 12 x 11

= Rs.13,06,800/-

In addition to that the claimants are entitled to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- towards Loss of Consortium, Loss of Estate and Funeral Expenses respectively as per the decision in *National Insurance Co. vs Pranay sethi and others* (cited supra). Thus, the claimants are entitled to a total compensation of Rs.13,76,800/- (13,06,800 + 40,000 + 15,000 + 15,000 = 13,76,800) as shown in the following tabular column:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.13,06,800 /-
2.	Loss of consortium	Rs.40,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/-
Total		Rs.13,76,800/-



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11. The compensation awarded by the Tribunal is hereby enhanced from Rs.10,10,735/- to Rs.13,76,800/- which would carry interest at the rate of 7.5% per annum from the date of claim petition.

12. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The contributory negligence fixed at 15 % on the part of the deceased, by the Tribunal, is set aside.
- iii. The compensation awarded by the Tribunal is enhanced from Rs.10,10,735/- to Rs.13,76,800/-.
- iv. The Appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, within a period of four weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.
- v. The liability of the third respondent (owner) and the fourth respondent (the United India Insurance Company Limited) is joint and several and the fourth respondent is directed to deposit the enhanced compensation amount i.e., Rs.13,76,800/- (less the



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amount already deposited) together with interest @ 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order/uploading of the order to the credit of M.C.O.P.No.462/2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

vi. On such deposit being made, the claimants are at liberty to withdraw their respective shares as shown below after following due process of law:

1st respondent / 1st wife = Rs.5,76,800/-

2nd Respondent / daughter = Rs.3,00,000/-

5th Respondent / 1st wife's son = Rs.2,50,000/-

Appellant / 2nd wife's son = Rs.2,50,000/-

13.08.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
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- To
- 1.The Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri
 2. The Branch Manager,
United India Insurance Company Limited,
Branch Office, Door No.26-3-2054/1,
1st Floor, Savithri Nagar,
Vedayapalem, Nellore - 524 004.
 - 3.The Section Officer, VR Section,
Madras High Court, Chennai.



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R.HEMALATHA, J.

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