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C.M.A.Nos.3449 and 3457 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.3449 and 3457 of 2021

And

C.M.P.No.19927 of 2021

- 1.Vijiyalakshmi
- 2.Kavitha
- 3.Kalavathi
- 4.Kalpana
- 5.Krishnamoorthy
- 6.Sathiyamoorthy
- 7.Minor.Jeeva

(The 7th minor petitioner is rep. by his
next friend/ guardian/ mother
Vijiyalakshmi) ... Appellants in C.M.A.3449/2021

The United India Insurance Company Limited,
Divisional Office, No.225, T.N.A Complex,
Salem Road, Tiruchengode Taluk,
Namakkal District. ... Appellant in C.M.A.3457/2021

Vs.

- 1.Loganathan
- 2.The United India Insurance Company Limited,
Divisional Office 171800, No.225,
TNA Complex, Salem Road,
Tiruchengode – 637 211.
Namakkal District. ... Respondents in C.M.A.3449/2021



C.M.A.Nos.3449 and 3457 of 2021

1.Vijiyalakshmi

2.Kavitha

3.Kalavathi

4.Kalpana

5.Krishnamoorthy

6.Sathiyamoorthy

7.Minor.Jeeva

(Minor claimant is rep. by his
next friend guardian and mother
Vijayalakshmi)

8.Loganathan

... Respondents in C.M.A.3457/2021

Prayer in C.M.A.No.3449 of 2021:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in the judgment and decree dated 02.08.2021 made in M.C.O.P.No.222 of 2019 on the file of the Motor Vehicle Accident Claims Tribunal/ Subordinate Judge Court, Paramathy.

Prayer in C.M.A.No.3457 of 2021:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 02.08.2021 made in M.C.O.P.No.222 of 2019 on the file of the Motor Accidents Claims Tribunal (Sub Court), Paramathi.



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C.M.A.Nos.3449 and 3457 of 2021

For Appellants : Mr.T.S.Arthanareeswaran
in C.M.A.No.3449 of 2021

Mr.D.Bhaskaran
in C.M.A.No.3457 of 2021

For Respondents : R1 – No Appearance
Mr.D.Bhaskaran for R2
in C.M.A.No.3449 of 2021

Mr.T.S.Arthanareeswaran for R1 to R7
R8 – No Appearance
in C.M.A.No.3457 of 2021

COMMON JUDGMENT

These civil miscellaneous appeals have been filed against the judgment and decree dated 02.08.2021 in M.C.O.P.No.222 of 2019 passed by the Motor Accident Claims Tribunal/ Sub Court, Paramathy.

2.The petitioners before the Motor Accident Claims Tribunal are the appellants in C.M.A.No.3449 of 2021 (hereinafter referred to as 'claimants'). The second respondent before the Motor Accident Claims Tribunal is the appellant in C.M.A.No.3457 of 2021 (hereinafter referred to as 'Insurance Company').

3.The learned counsel appearing for the claimants submitted that



C.M.A.Nos.3449 and 3457 of 2021

on 22.12.2018 at about 07.00 p.m., the deceased Ganesan was riding the motorcycle in Maniyanur – Velakoundampatti Road near Vannankadu Thangavel Kadu from East to West and hit on the backside of the Mahindra Tractor bearing registration No.TN-28 AY-8843 which was parked on the roadside without any signal, due to which, the deceased lost his life. Thereafter, the wife, daughters and sons of the deceased filed claim petition claiming compensation of Rs.25 Lakhs and the Tribunal after adjudication awarded a sum of Rs.17,34,920/- as compensation to the claimants and directed the Insurance Company to deposit the compensation amount with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and proportionate costs.

4.The learned counsel appearing for the claimants further submitted that in order to prove the case the claimants examined P.W.1 and P.W.2 and marked exhibits Ex.P.1 to Ex.P.20 and further submitted that though the Insurance Company marked exhibits Ex.D.1 and Ex.D.2, they did not examine any witness. The learned counsel further submitted that the accident is of the year 2018, however, the Tribunal fixed the notional monthly income of the deceased as Rs.12,000/- and awarded a meagre compensation to the claimants and



C.M.A.Nos.3449 and 3457 of 2021

hence, the claimants are entitled for enhanced compensation.

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5.The learned counsel appearing for the Insurance Company submitted that deceased drove the motorcycle along with three pillion riders, which itself is contrary to the Motor Vehicles Act and further submitted that the deceased deceased drove the motorcycle in a rash and negligent manner and hit on the rear side of the vehicle insured with the Insurance Company which was parked on the roadside. Hence, the accident occurred due to the rash and negligent driving of the driver of the motorcycle. Though the Tribunal relied on the decision of this Court in the case of National Insurance Company Limited Vs. Thangaraj and Krishnaraj [C.M.A.Nos.624 and 2413 of 2016] and has observed that in the said case 20% contributory negligence has been fixed on the claimant, the Tribunal has not fixed any negligence on the deceased in the present case, which is not sustainable one. The learned counsel further submitted that though there are seven claimants in this case, the daughters of the deceased are married and they are not dependants of the deceased and hence, the Tribunal ought to have deducted $\frac{1}{4}$ of the amount towards personal expenses, however, the Tribunal awarded compensation by deducting $\frac{1}{5}$ of the amount towards personal expenses, which is not



C.M.A.Nos.3449 and 3457 of 2021

sustainable one.

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6.Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the claimants and perused the materials available on record.

7.The facts in the present case is not in dispute. Admittedly, the deceased drove the motorcycle along with three pillion riders, which is admitted by the claimants by examining P.W.2. Though this Court in the case of National Insurance Company Limited Vs. Thangaraj and Krishnaraj [C.M.A.Nos.624 and 2413 of 2016] fixed 20% contributory negligence on the claimant, in the present case, inorder to prove the negligence, the Insurance Company has not examined any witness before the Tribunal. The claimants have examined one eye witness as P.W.2 and P.W.2 in her evidence has deposed that on 22.12.2018 at about 07.00 p.m., when she was walking on the left side on the Maniyanur – Velakoundampatti Road from East to West, the Mahindra Tractor bearing registration No.TN-28 AY-8843 was parked on the same road in the no parking area without any signal and the deceased Ganesan who was riding the motorcycle hit on the backside of Tractor. Hence, inorder to strike the balance, this Court fix 10% contributory



C.M.A.Nos.3449 and 3457 of 2021

negligence on the deceased.

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8.Insofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.13,93,920/- for loss of pecuniary benefits, Rs.44,000/- for loss of consortium to the first claimant, Rs.2,64,000/- for loss of parental consortium to the claimants 2 to 7, Rs.16,500/- for loss of estate, Rs.16,500/- for funeral expenses and arrived at a total compensation of Rs.17,34,920/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

9.The Hon'ble Apex Court in Syed Sadiq case fixed a sum of Rs.6,500/- as notional monthly income of the vegetable vendor in the year 2008. In the present case, the accident took place during the year 2018, however, the Tribunal fixed the notional monthly income of the deceased at Rs.12,000/-, which in the opinion of this Court is low and this Court fix the notional monthly income of the deceased as Rs.14,000/-. The Tribunal has rightly awarded 10% future prospects and has rightly adopted the multiplier 11. The Tribunal has deducted 1/5 of the amount towards personal expenses, however, the daughters of the deceased are married and they are not dependents of the



C.M.A.Nos.3449 and 3457 of 2021

deceased and hence, this Court deducts $\frac{1}{4}$ of the amount towards

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personal expenses. Hence, the amount awarded for loss of pecuniary benefits works out to Rs.15,24,600/- [$\text{Rs.14,000/-} \times 10\% = \text{Rs.1,400/-}$; $\text{Rs.14,000/-} + \text{Rs.1,400/-} = \text{Rs.15,400/-}$; $\text{Rs.15,400} \times \frac{1}{4} = \text{Rs.3,850/-}$; $\text{Rs.15,400/-} - \text{Rs.3,850/-} = \text{Rs.11,550/-}$; $\text{Rs.11,550/-} \times 12 \times 11 = \text{Rs.15,24,600/-}$].

10.The amount awarded under the heads loss of consortium to the first claimant, loss of parental consortium to the claimants 2 to 7, loss of estate and funeral expenses, in the opinion of this Court are high and this Court is inclined to reduce the amount awarded under the said heads. Accordingly, the amount awarded under the head loss of consortium to the first claimant is reduced to Rs.40,000/- from Rs.44,000/-, the amount awarded under the head loss of parental consortium to the claimants 2 to 7 is reduced to Rs.2,40,000/- from Rs.2,64,000/-, the amount awarded under the head loss of estate is reduced to Rs.15,000/- from Rs.16,500/- and the amount awarded under the head funeral expenses is reduced to Rs.15,000/- from Rs.16,500/-.



C.M.A.Nos.3449 and 3457 of 2021

11. Accordingly, the compensation amount is re-assessed as

follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of pecuniary benefits	Rs.13,93,920/-	Rs.15,24,600/-
2.	Funeral Expenses	Rs. 16,500/-	Rs. 15,000/-
3.	Loss of consortium to the first claimant	Rs. 44,000/-	Rs. 40,000/-
4.	Loss of parental consortium to the claimants 2 to 7	Rs. 2,64,000/-	Rs. 2,40,000/-
5.	Loss of estate	Rs. 16,500/-	Rs. 15,000/-
	Total	Rs.17,34,920/-	Rs.18,34,600/-

12. Since 10% contributory negligence is fixed on the deceased, the claimants are entitled to 90% of the total compensation i.e., Rs.16,51,140/- [90% of Rs.18,34,600/-] along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

13. The civil miscellaneous appeals are disposed of on the above terms. The judgment and decree dated 02.08.2021 in M.C.O.P.No.222 of 2019 passed by the Motor Accident Claims Tribunal/ Sub Court, Paramathy, is modified to the above extent.



C.M.A.Nos.3449 and 3457 of 2021

14.The Insurance Company/ appellant in C.M.A.No.3457 of 2021

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is directed to deposit the modified award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants 1 to 6/ appellants 1 to 6 in C.M.A.No.3449 of 2021 are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The seventh claimant/ seventh appellant in C.M.A.No.3449 of 2021 is permitted to withdraw his share as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal and on production of necessary proof with regard to his majority. If the seventh claimant is still minor, his share shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until he attain majority and the interest derived from out of the said share of the minor shall be paid to the first claimant/ mother every quarter to be utilized for the welfare of the said minor. The Insurance Company is permitted to withdraw the

10/12



C.M.A.Nos.3449 and 3457 of 2021

excess amount, if any, already deposited by them.

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15.The civil miscellaneous appeals are disposed of on the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

29.11.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal/
Sub Court, Paramathy.



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C.M.A.Nos.3449 and 3457 of 2021

M.DHANDAPANI,J.
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C.M.A.Nos.3449 and 3457 of 2021