



C.M.A.(MD)No.1321 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **30.08.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.1321 of 2012

and

CROS.OBJ(MD)No.31 of 2013

C.M.A(MD)No.1321 of 2012:-

National Insurance Company Limited,
63, West Pradakshinam Road,
Karur.

...Appellant/Respondent No.3

Vs.

1.Murugambal

2.Minor Suba

3.Minor Dinesh

4.Mayil

... Respondents 1 to 4/Petitioners 1 to 4

5.V.Sekar

... Respondent No.5/Respondent No.1

(Exparte in Tribunal; Notice dispensed with)

6.S.Ramalingam

... Respondent No.6/Respondent No.2

(Minors are represented through the first respondent mother.)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree dated 01.07.2011 in M.C.O.P.No.507 of 2009 on the file of the Motor Accidents Claims Tribunal, District Court, Karur and to allow this appeal.



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For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R6 : Mr.M.Karthikeya Venkitachalapathy
(R1 to R4)
No appearance (R6)

CROS.OBJ(MD)No.31 of 2013:-

1.Murugambal
2.Minor Suba
3.Minor Dinesh
4.Mayil ...Appellants 1 to 4/Respondents 1 to 4 /
Petitioners 1 to 4

Vs.

1.National Insurance Company Limited,
63, West Pradakshinam Road,
Karur. ... 1st Respondent/Appellant/
3rd Respondent

2.V.Sekar
3.S.Ramalingam ...Respondents 2&3/Respondents 5&6/
Respondents 1&2

PRAYER: Appeal is filed under Order 41 Rule 22 of the Civil Procedure Code, to enhance the compensation amount to the claimant in MCOP No. 507 of 2009 on the file of the Motor Accident Claims Tribunal / District Court, Karur.

For Appellants : Mr.M.Karthikeya Venkitachalapathy
For Respondents : Mr.S.Srinivasa Raghavan (R1)
No appearance (R3)



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COMMON JUDGMENT

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The instant appeal has been filed by the insurance company challenging the finding on negligence and also the quantum of compensation awarded to the respondents 1 to 4/claimants (hereinafter referred to as “claimants” for the sake of convenience). The claimants have filed a cross objection seeking enhancement of the compensation.

2. The claimants, claiming to be the wife, children, and parent of the deceased, filed a claim petition before the Motor Accidents Claims Tribunal, District Court, Karur (hereinafter referred to as 'Tribunal' for the sake of convenience) stating that while the deceased was riding his two-wheeler, the mini-lorry insured with the appellant insurance company came in the opposite direction in a rash and negligent manner and caused a collision, as a result of which the deceased was thrown out of the two-wheeler and sustained fatal injuries.

3. The driver of the mini-lorry, who is the fifth respondent herein, remained *ex parte* before the Tribunal.



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4. The appellant filed a counter stating that the accident did not take place due to the negligence of the driver of the insured vehicle, that the deceased had ridden his two-wheeler in a rash and negligent manner and caused the accident, and that in any case, the compensation claimed was excessive.

5. The claimants examined PW1 and PW2 and marked Ex.P1 to Ex.P12. The appellant insurance company examined RW1 and marked Ex.R1 and Ex.R2.

6. The Tribunal, after taking into consideration the oral and documentary evidence available on record, held that the deceased also contributed to the accident and fixed 20% of the contributory negligence on the deceased and determined the compensation payable by the appellant insurance company at Rs. 6,37,600/-.

7. The learned counsel appearing for the appellant submitted that the manner of accident as revealed from the evidence of RW1, the driver of the insured vehicle would suggest that he was not guilty of rash and negligent driving that in any case, the deceased was predominantly



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responsible for the accident and prayed for setting aside the award of the Tribunal.

8. Per contra, the learned counsel appearing for the claimants submitted that the finding of the Tribunal on negligence is reasonable, and in fact, the entire liability ought to have been fixed on the driver of the insured vehicle, and that the Tribunal had awarded meagre compensation under the head “Loss of the Consortium” and “Loss of love and affection” and prayed for enhancement of compensation.

9. Heard the learned counsel appearing on behalf of the appellant insurance company and the learned counsel appearing for the claimants and perused the records.

10. The points for consideration in the instant appeal are as follows:

(a) Whether the finding on negligence by the Tribunal is justified?

(b) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?



11. As regards the first question, it is seen that the claimants had examined P.W.2, the eye witness and marked the FIR which corroborates the version of P.W.2. The appellant had examined R.W.1, the driver of the insured vehicle, who had deposed that the rider of the two-wheeler was coming behind and had dashed against the mini-lorry, and he fell off the bike, and therefore, the deceased was responsible for the accident. However, the report of the Motor Vehicle Inspector marked as Ex.P5 and the rough sketch prepared by the police marked as Ex.P4 would suggest that the version of RW1 cannot be accepted to hold that the deceased was only guilty of negligence.

12. However, considering the evidence adduced on the side of the claimants and on the side of the appellant insurance company and the documents, this Court is of the considered view that the Tribunal was right in holding that the deceased also contributed to the accident due to his negligence. The finding of the Tribunal fixing the contributory negligence to the deceased at 20% in the facts and circumstances of this case cannot be faulted and therefore confirmed. Point No.1 is answered accordingly.



13. As regards the compensation awarded by the Tribunal, the learned counsel appearing for the claimants is unable to point out any infirmity in the quantum awarded except for stating that the compensation under the head of loss of consortium and the loss of love and affection at Rs.10,000/- each is meagre.

14. This Court is of the view that the compensation under the head of loss of consortium and the loss of love and affection to the four claimants has to be enhanced to Rs. 40,000/- each. The Tribunal had erroneously deducted 20% contributory negligence only from the amount awarded under the head “Loss of Income”. The compensation has to be computed after deducting 20% contributory negligence from the total compensation. Hence, the award of compensation is modified as under:

Heads of Compensation	Award of the Tribunal (Rs.)	Modified award of this Court (Rs.)
Loss of income	5,37,600	6,72,000
Medical Expenses	40,000	40,000
Loss of love and affection	40,000	(40,000 * 3) 1,20,000
Funeral Expenses	10,000	10,000
Loss of Consortium	10,000	(40,000 * 1) 40,000
Total	6,37,600	8,82,000



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20% of Contributory negligence		(-) 1,76,400
	6,37,600	7,05,600
Enhanced by		68,000

The award under other heads is confirmed. The appellant shall deposit the enhanced compensation award of Rs.7,05,600, (Seven Lakhs and Five Thousand and Six Hundred only), together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

15. On such deposit, the respondents 1 and 4 in the appeal / claimants are entitled to withdraw their respective share amount together with proportionate interest and costs, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing appropriate applications before the Tribunal.

16. The respondents 2 and 3 in the appeal / claimants were minors when the claim petition was filed in the year 2009. They would have



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attained the age of majority now. Hence, they are permitted to file appropriate application for recording their majority and to withdraw their shares. The respondents 1 to 4 in appeal / claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

17. In fine, the appeal in CMA(MD)No. 1321 of 2012 is dismissed and the cross objection in Cros.Obj.(MD)No. 31 of 2013 is partly allowed. No costs.

30.08.2024

Index : Yes / No
Neutral Citation : Yes / No
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TO:-

- 1.The Motor Accidents Claims Tribunal, District Court, Karur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)No.1321 of 2012

30.08.2024