



C.M.A(MD)Nos.1621 of 2013 and 1195 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.07.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos.1621 of 2013 and 1195 of 2014

and

M.P.(MD)No.1 of 2013

C.M.A.(MD)No.1621 of 2013:

Royal Sundaram Alliance Insurance
Company Limited,
Represented by its Branch Manager,
Office at No.176-D.F Trivandrum Road,
Tirunelveli.

... Appellant

Vs.

1.Kanchana
2.Rajadurai
3.Sudha
4.Jegan

5.The Tamil Nadu State Transport
Corporation Limited,
Represented by its General Manager,
Virudhunagar.

6.Narayana Singam

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decretal order, dated 11.03.2013, made in



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M.C.O.P.No.898 of 2010, on the file of the Motor Accident Claims (III Additional District & Sessions Judge), Tirunelveli.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R4 : Mr.T.Selvakumaran
For R5 : Mr.K.Ramaiah
For R6 : No Appearance

C.M.A.(MD)No.1195 of 2014:

1.Kanjana
2.Rajadurai
3.Sudha
4.Jegan

... Appellants

Vs.

1.The Tamil Nadu State Transport
Corporation Limited,
Represented by its General Manager,
Virudhunagar.

2.Narayana Singam

3. Royal Sundaram Alliance Insurance
Company Limited,
Represented by its Branch Manager,
Office at No.176-D-F. Trivandrum Road,
Tirunelveli.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree, dated 11.03.2013, made in M.C.O.P.No.898 of 2010, on the file of the Motor Accident Claims (III Additional



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District & Sessions Judge), Tirunelveli.

For Appellants : Mr. T.Selvakumaran
For R1 : Mr.K.Ramaiah
For R2 : Notice dispensed with
For R3 : Mr.Srinivasa Raghavan

COMMON JUDGMENT

The Insurance Company has preferred the Civil Miscellaneous Appeal in C.M.A.(MD)No.1621 of 2013.

2. It is a case of fatal. The contention of the Insurance Company is that accident happened due to head on collision, but the entire liability is fixed on the Insurance Company. It is seen the offending vehicle is Transport Corporation bus. The said bus was plying on the opposite direction, hence, it is a head on collision. When there is head on collision then both the vehicles are at negligence. This Court had consistently held that both the parties are liable if there is head on collision. The Tribunal had failed to take the contributory negligence on the part of Transport Corporation bus driver and hence the impugned order is erroneous. Therefore, this Court is fixing the contributory negligence on the Insurance Company as 50% and on the Transport Corporation as 50%.



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3. The claimants have preferred an appeal in C.M.A.(MD)No.1195 of 2014 for enhancement of compensation. The claimants have filed a memo, dated 04.12.2017, to dispense with the notice for 2nd respondent. The said memo is recorded.

4. It seen that the Tribunal has passed the order under Workman Compensation Act. On perusal of the policy, it is seen that the policy is a comprehensive one and not an Act policy. Therefore, the Tribunal ought to have passed an award under Motor Vehicles Act and not under Workman Compensation Act.

5. It seen that the deceased was only 22 years old and he was a bachelor. Therefore, 50% of his income ought to be deducted for personal expenses. The Tribunal has not a fixed any future prospects. Since the deceased was below the age of 40, future prospects ought to be fixed as 40% and the notional fixation of monthly salary ought to be Rs.6500/-. The claimants 1 and 2 being the parents, they are entitled to Rs.40,000/- each under the head of loss of love and affection and the claimants 3 and 4 are entitled to Rs.40,000/- each under the head of filial consortium.



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6. The modified award amount granted by this Court is as under:

i.	Monthly income of the deceased	Rs.6,500/-
ii.	Future Prospects (40%)	Rs.2,600/-
Total		Rs.9,100/-
Deduction of 50% of income towards personal expenses		- Rs.4,550/-
After deduction		Rs.4,550/-

Sl. No.	Heads	Award granted by Tribunal	Award granted by this Court	Enhanced / Confirmed / Reduced
1.	Loss of Income	Rs.4,48,000/-	Rs.9,82,800/- (Rs.4,550/- * 12 * 18)	Enhanced
2.	Filial Consortium for claimants 3 and 4	Nil	Rs.80,000/- (Rs.40,000/- * 2)	Enhanced
3.	Loss of Love and Affection for claimants 1 and 2	Nil	Rs.80,000/- (Rs.40,000/- * 2)	Enhanced
	Total	Rs.4,48,000/-	Rs.11,42,800/-	Enhanced

Thus, the total compensation granted by the Tribunal to the tune of Rs.4,48,000/- is enhanced to Rs.11,42,800/- by this Court. 50% of the said compensation (Rs. 5,71,400/-) shall be paid by the Royal Sundaram Alliance Insurance Company and 50% of the said compensation (Rs.5,71,400/-) shall be paid by the Transport



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Corporation.

7. The Royal Sundaram Alliance Insurance Company is directed to deposit Rs.5,71,400/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The Transport Corporation is directed to deposit Rs.5,71,400/- with interest at the rate of 7.5% per annum to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposits, the claimants are permitted to withdraw their shares (claimants 1 to 4 are entitled to Rs.5,31,400/-, Rs.5,31,400/-, Rs.40,000/- and Rs.40,000/- respectively) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal.

8. With the above said directions, the Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No



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Internet : Yes / No

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To

1.3rd Additional District & Sessions Judge,
Tirunelveli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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