



C.M.A.(MD)No. 620 of 2024

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Dated: 12.08.2024

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

C.M.A.(MD)No.620 of 2024

and

C.M.P(MD) No.7728 of 2024

The National Insurance Company Ltd.,
BC.No.7-1-5, Main Road, Paravai
Madurai- 625 402

..Appellant/2nd Respondent

Vs.

1.P.Malayammal

2.P. Sanjeevikumar

3.P.Buvaneshwari

..Respondents/Petitioners 1 to 3

4.G.Hasan Ipnu Adukam

5.B.Gopinath

..Respondents 4& 5/Respondents 1 &2

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decreetal order dated 21.06.2022 made in MCOP No.280 of 2020 on the file of the Motor Accident Claims Tribunal, Sub Court, Manaparai.

For Appellant : Mr.V.Sakthivel

for Mr.S.Srinivasa Raghavan

For R1 to R3 : Mr.S.Gokulraj

For R4 : Mr.A.Arunprasad

For R5 : No appearance



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JUDGMENT

The appellant had preferred the appeal challenging the findings on negligence and the quantum of compensation awarded by the Tribunal.

2. The respondents 1 to 3 have filed a claim petition stating that while the deceased was walking on a public road, the vehicle insured with the appellant came in a rash and negligent manner and dashed against the deceased, as a result of which, the deceased sustained fatal injuries.

3. The respondents 4 and 5 who were arrayed as respondents 1 and 2 before the Tribunal, remained *exparte*.

4. The appellant filed a counter stating that the accident did not take place due to rash and negligent driving of the driver of the insured vehicle and that the deceased crossed the road suddenly and hence, they are not liable to pay any compensation.



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5. The claimants have examined P.W.1 and P.W.2 and marked documents Ex.P.20.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligent act of the driver of the offending vehicle insured with the appellant and hence, awarded the compensation.

7. The learned counsel for the appellant submitted that the finding of the Tribunal with regard to the negligence is erroneous and in any case, the compensation awarded by the Tribunal is excessive; that though the deceased was a bachelor, the Tribunal had deducted 1/3rd of his income towards personal expenses instead of 50% and that the brother and sister of the deceased were not entitled to compensation under the head of loss of consortium.

8. The learned counsel for the respondents 1 to 3 would submit that the Tribunal has awarded just and reasonable compensation and was right in holding that the accident took place due to negligence of the driver of the offending vehicle and hence, would submit that there is no infirmity in the award of the Tribunal.



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9. R4 remained exparte and hence, notice to R4 is dispensed with.

10. The points for determination in the appeal are:

a) Whether the Tribunal was right in holding that the driver of the offending vehicle insured with appellant was guilty of rash and negligent driving?

b) Whether the quantum of compensation of the award of the Tribunal is just and reasonable?

11. As regards negligence, it is seen that the claimants have examined P.W.2 an eyewitness who had clearly stated that the accident took place due to the rash and negligent driving of the fifth respondent herein, which is corroborated by the final report/Ex.P.3 filed by the police after investigation. Neither the appellant nor the respondents 4 and 5 have let in any contra evidence to disprove the evidence let in on the side of the claimants. Therefore, the findings of the Tribunal as regards negligence cannot be faulted and hence, confirmed.

12. As regards the quantum of compensation, it is seen that the Tribunal had correctly adopted the notional income at Rs.10,000/- as the claimants have not produced any proof of income



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of the deceased who was aged 29 years at the time of occurrence and was a bachelor. However, the Tribunal after rightly adding future prospectus had deducted 1/3rd towards personal expenses which is contrary to the settled position of law. The Tribunal ought to have deducted 50% towards personal expenses. Therefore, the award of compensation under the head loss of income is calculated as Rs.14,28,000/- (14000(10000+4000(future prospectus at 40%X12X17X50%))

13. The compensation under the other heads is just and reasonable. However, the compensation under the head of loss of consortium has to be enhanced to Rs.1,20,000/- as each of the claimants is entitled to Rs.40,000/-. Thus, the compensation is modified as follows:

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Loss of Income	19,04,000/-	14,28,000/-	Reduced
2	Loss of Estate	15,000/-	15,000/-	confirmed
3	Loss of consortium	1,00,000/-	1,20,000/-	Enhanced
4	Funeral Expenses	15,000/-	15,000/-	confirmed
5	Damages to cloth	3,000/-	3,000/-	confirmed
	TOTAL	20,37,000/-	15,81,000/-	Reduced



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14. The appellant/Insurance Company is directed to deposit the modified compensation amount after deducting the amount already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same as per the apportionment made by the Tribunal.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently connected miscellaneous petition is closed.

12.08.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal/
Sub Court, Manaparai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN,J.

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