



C.M.A(MD)No.989 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.02.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

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and

C.M.P(MD)No.13764 of 2023

The United India Insurance Company Limited,
Nagercoil Branch,
Represented by its Manager,
Xavier Buildings PWD Road,
Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

: Appellant

Vs.

1.Rajammal
2.Santhi
3.Manikandan
4.Kapriel Rajesh
5.Rengaswamy

: Respondents



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PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order dated 03.09.2022 passed in M.C.O.P.No.13 of 2017 on the file of the Motor Accident Claims Tribunal/Sub Judge, Kuzhithurai.

For Appellant : Mr.N.Dlipkumar

For Respondents : Mr.C.Godwin
for R1 and R2

JUDGMENT

[Judgment of the Court was made **by K.K. RAMAKRISHNAN., J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal/Subordinate Judge, Kuzhithurai in M.C.O.P.No.13 of 2017, dated 03.09.2022, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the fourth respondent in M.C.O.P.No.13 of 2017, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kuzhithurai. The respondents 1 and 2 are the claimants, the third respondent is the owner, the fourth respondent is



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the owner-cum-driver, in which, the deceased was travelled and the fifth respondent is the driver of the offending vehicle. The respondents 1 and 2 filed the claim petition in M.C.O.P.No.13 of 2017, claiming a sum of Rs.30,00,000/-(Rupees Thirty Lakhs only) as compensation for the death of the son of the first respondent and the brother of the second respondent in the accident that occurred on 22.01.2015. By the order, dated 03.09.2022, the Tribunal awarded a sum of Rs.25,72,197/- (Rupees Twenty Five Lakhs Seventy Two Thousand One Hundred and Ninety Seven only) as compensation.

3.Facts of the Case:-

According to the respondents 1 and 2, on 22.01.2015 at about 11.30 a.m, the deceased was travelling in a motorcycle bearing Reg.No.TN-74-J-5465 driven by the fourth respondent herein from Arasan Vilai to Kuruthancode. When the motorcycle was reaching near the house of one Lawrence which is situated on the western side of the Arasanvilai, Kuruthancode Road, a TATA Maxicab Tourist vehicle bearing Reg.No.TN-67-AQ-6793 driven by the fifth respondent and owned by the third respondent, hit the motorcycle, in which, the deceased was



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travelling, just in front of the house of Lawrence. According to the respondents 1 and 2, the fifth respondent, who was the driver of the TATA Maxi Cab, had suddenly come across the motorcycle driven by the fourth respondent, in a rash and negligent manner. On seeing the rash and negligent driving of the fifth respondent, the fourth respondent kept his vehicle to the extreme left getting down from the tarred portion of the road to avoid a hit. However, the fifth respondent could not control his vehicle and hit the motorcycle. Due to the impact, the deceased was thrown on the road, sustained injuries all over his body and was admitted to Muthu Neuro Centre, Chunkankadai, Nagercoil on the same date and succumbed to his injuries on 29.01.2015. The deceased was aged about 31 years, bachelor at the time of accident and he was working as Masan and earning a sum of Rs.700/- per day. An FIR was registered against the driver of the Maxicab. The accident occurred only due to the rash and negligent driving by the driver of the Maxicab belonging to the third respondent. Therefore, the respondents 1 and 2 filed the claim petition, claiming a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) as compensation.



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4.The appellant filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the TATA Maxicab. The accident occurred only due to the rash and negligent riding of the rider of the motorcycle, in which, the deceased was travelling and prayed for dismissal of the claim petition.

5.Before the Tribunal, the second respondent examined herself as P.W.1 and another witnesses one Murugesand and Maria John were examined as P.W.2 and P.W.3 and marked 15 documents as Exs.P1 to P15. The appellant examined one Jobin Christo as R.W.1 and marked Exs.R1 and R3.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the TATA Maxicab and directed the appellant Insurance



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Company to pay a sum of Rs.25,72,197-(Rupees Twenty Five Lakhs Seventy Two Thousand One Hundred and Ninety Seven only) as compensation and the details as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Dependency	22,40,064/-
2	Medical expenses & Ambulance fee	2,08,133/-
3	Loss of Consortium	88,000/-
4	Loss of Estate	16,500/-
5	Funeral Expenses	16,500/-
6	Transport Expenses	3,000/-
<i>Total</i>		<i>25,72,197/-</i>

Aggrieved over the same, the appellant filed this appeal.

7.Submission of the learned counsel for the appellant:

(i) The learned counsel for the appellant submitted that the Tribunal, without properly appreciating the evidence of R.W.1 and Ex.R2 charge sheet, erroneously came to the conclusion that the bus driver is the Maxicab was responsible for the accident. He also submitted that the



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Tribunal has erroneously fixed the monthly income as Rs.17,500/- and deducted 1/3rd amount from the salary. Since the deceased was a bachelor, half of the salary has to be deducted.

(ii) The learned counsel further submitted that the Tribunal granted extraordinary award without following the guidelines issued by the Hon'ble Supreme Court.

8. Submission of the learned counsel for the respondents 1 and 2:

(i) The learned counsel for the respondents 1 and 2/claimants submitted that P.W.3 is not an interested witness and that he is an independent witness and he cogently deposed about the accident and that there is no reason to disbelieve his version. The FIR also filed against the driver of the offending vehicle. Based on the evidence, the Tribunal has fixed the negligence upon the driver of the offending vehicle. Hence, he seeks for confirmation of the finding of the Tribunal on negligence.



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(ii)The learned counsel further submitted that on the basis of the salary certificate (Ex.P.15), the Tribunal has properly calculated the quantum. P.W.2 was examined to prove the same. The multiplier '13' adopted by the Tribunal is also correct and hence, no interference is warranted by this Court. Hence, he seeks for confirmation of the finding of the Tribunal on quantum and also seeks for dismissal of this appeal.

9. Aggrieved against the said award, dated 03.09.2022, the appellant Insurance Company has filed the present appeal.

10. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents 1 and 2 and also perused all the materials available on record.

11. The following points arise for consideration of this appeal:

11.1. Whether the negligence is correctly fixed on the Tata Maxicab Tourish Vehicle?

11.2. Whether the compensation granted is in accordance with law?



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WEB COPY 12.Discussion on the negligence:

It is the case of the claimants that on 22.01.2015 at 11.30 a.m. the deceased was travelling in a motorcycle as pillion rider. When the said motorcycle was reaching near the house of one Lawrence at Kuruthancode Road, a Tata Maxicab Tourist vehicle hit the motorcycle and due to the impact he died on the spot. An FIR was registered against the driver of the Tata Maxicab Tourist vehicle in Crime No.12 of 2015 for the offence punishable under Sections 279, 337 and 338 of IPC. After the investigation, charge sheet was also against the driver of the Tata Maxicab Tourist vehicle. P.W.3 an independent witness cogently deposed that due to rash and negligent driving of the driver of the Tata Maxicab vehicle, the accident had occurred. Even though, he was subjected to cross-examination, no material was elicited on the side of the appellant's Insurance Company to disbelieve his evidence. His evidence is trustworthy and no materials were let in on the side of the appellant to doubt his testimony. In view of the above discussion, this Court finds no perversity in the findings of the Tribunal in fixing the negligence on the driver of the Tata Maxicab Tourist vehicle. Therefore, this Court



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confirms the finding of the Tribunal that driver of the Tata Maxicab Tourist vehicle drove his vehicle in a rash and negligent manner and dashed against two wheeler of the deceased and caused the accident. Hence, the appellant/Insurance Company is liable to pay the compensation.

13.Discussion on quantum:

The learned Tribunal Judge has granted compensation of Rs.25,72,197/-. The learned counsel for the appellant submitted that the Tribunal has granted extrorbitant amount as compensation. To appreciate the said contention, this Court perused the salary certificate of the deceased and other relevant documents and observes as follows:

13.1. The deceased was working as Mason he is aged about 31 years and his salary certificate was marked as Ex.P15. As per Ex.P15 and as per evidence of P.W.2, salary was fixed as Rs.17,500/- per month and no contrary evidence was let in to disbelieve the above monthly income. The learned counsel for the appellant Insurance Company submitted that since the deceased was a bachelor, half of the amount has

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to be deducted towards his personal expenses, however, the Tribunal has deducted 1/3rd amount. The learned counsel for the respondents 1 and 2/claimants has also accepted the said contention. Therefore, this Court has also fixes the monthly income of the deceased as Rs.17,500/-. Since the deceased was aged about 31 years, 40% future prospects also is fixed as per the judgment in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**. Hence, after adding 40% of the income and after deducting 1/2, and by applying multiplier '13', this Court here awards Rs.19,11,000/- $(17500+7000(40\%)=24500 \times 12 \times 13 \times 1/2)$ towards loss of dependency. We are of the considered opinion that the amount awarded under other heads are fair and reasonable and the same are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is also confirmed.

14. Conclusion

In the light of the above said discussion, the claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:



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S.No.	Under the head	a) Calculation	b) Amount in Rupees
1	Monthly income (monthly income + future prospects 40%)	Rs.17,500 + Rs.7000 = Rs.24,500/-	24,500/-
2.	Deduction of 1/2 for his personal expenses	Rs.24,500 – Rs.12,250 = Rs.12,250/-	12,250/-
3	Annual Loss of Income	Rs.12,250 X 12 = Rs.1,47,000/-	1,47,000/-
4	Loss of dependency after applying the multiplier “13”	Rs.1,47,000 X 13 =Rs.19,11,000/-	19,11,000/-
5	Compensation		Amount in Rupees
	a) Loss of dependency		19,11,000/-
	b)Medical expenditure & Ambulance fee		2,08,133/-
	c) Loss of Consortium		88,000/-
	d)Loss of Estate		16,500/-
	e)Funeral Expenses		16,500/-
	f) Transport Expenses		3,000/-
Total			22,43,133/-

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the award passed by the Motor Accidents Claims Tribunal, Subordinate Judge, Kuzhithurai in M.C.O.P.No.13 of 2017, dated



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03.09.2022 is hereby reduced. The appellant Insurance Company is directed to deposit the modified amount of Rs.22,43,133/- with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to withdraw the deposited amount as per the ratio fixed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

**[V.B.S.J., [K.K.R.K.J.,]
28.02.2024**

Index :Yes/No
Internet :Yes/No
skn/sbn

To

- 1.The Motor Accident Claims Tribunal,
Subordinate Judge, Kuzhithurai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN.J.,

and

K.K. RAMAKRISHNAN.J.,

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and

C.M.P(MD)No.13764 of 2023

28.02.2024