



C.M.A(MD)No.152 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.07.2024

CORAM

**JUSTICE N. SESHASAYEE
and
JUSTICE P.VADAMALAI**

C.M.A(MD)No.152 of 2022
and
C.M.P(MD)No.1374 of 2022

TATA AIG General Insurance Company Ltd.,
Represented through its Divisional Manager,
North Block, 3rd Floor,
AA Towers, 4 & 5 Bypass Road,
Madurai – 625 016.

... Appellant/Respondent No.2

Vs.

1.George Thomas
2.Leelamma Thomas

... Respondents 1 and 2/Petitioners

3.S.I.V.Chinna Thambi

... Respondent No.3/Respondent No.1

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 07.10.2021 passed in M.C.O.P.No.2302 of 2015 on the file of the Motor Accident Claims Tribunal/District and Sessions Judge, Communal Clash Cases Court, Madurai.



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For Appellant : Mr.V.Sakthivel
For R-1 & R-2 : Mr.Madhan
For R-3 : Mr.S.Balaji

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This appeal is preferred by the Insurance Company of the offending vehicle challenging both the quantum of compensation awarded by the Tribunal for the heirs of the victim of a fatal accident and also fastening the entire negligence on the driver of the offending vehicle.

2. The facts are as below:

- a) On 09.09.2012 while the victim to be of the accident was riding his motor-cycle, a car insured with the appellant came from the opposite direction and knocked the rider of the motor-cycle. He sustained multiple injuries and after fighting for his life for about six months, he finally gave up his battle and died on 06.06.2013.



b) Seeking compensation, his dependents moved the Tribunal with M.C.O.P.No.2302 of 2015. The victim had a post-graduation in Physiotherapy. But, at the relevant time when the accident took place, he was working as a Programme Manager in CPR programme at Muscular Dystrophy Foundation India. As per Ex.P7-Appointment Order issued by Muscular Dystrophy Foundation India, he was earning salary of Rs.13,325/- a month and that, he was a qualified Physiotherapist as it was established through Exs.P5 and P6.

c) The Tribunal had reckoned that the victim was earning at least Rs.750/- a day after his regular employment and assessed the same at Rs.22,500/-. In all, according to the Tribunal, the victim was earning Rs.35,825/- a month and he was 31 years at the relevant time and was a bachelor. Accordingly, the Tribunal applied '16' as the multiplier and to it, it added another 40% towards future prospects of increase in income and deducted 50% towards personal expenses of the victim and arrived at a net sum of Rs.48,38,400/- towards the compensation for loss of dependency(loss of pecuniary benefits). After adding other



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conventional heads, it granted a total compensation of Rs.58,88,400/- and the break up is as follows:

S.No	Description	Amount awarded by Tribunal (Rs.)
1.	Loss of Pecuniary Benefits	48,38,400
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Consortium (1 st petitioner and 2 nd petitioner are entitled to Rs.40,000/- each)	80,000
5.	Medical Bills	9,40,000
	Total	58,88,400

3. This is now challenged by the Insurance Company essentially on two grounds:

- a) That the victim was not wearing a helmet at the relevant time.
- b) That his income from physiotherapy is not established adequately. To prove that he was earning a sum of Rs.750/- a day, a certificate of a certain Technician in whose hospital he is said to have worked as a



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Physiotherapist post his official time of his regular employment was marked as Ex.P9.

4. Heard both sides. The learned counsel for the appellant essentially laid emphasis on the two grounds on the basis of which this appeal is laid. Inasmuch as the victim was not wearing a helmet and invited upon himself the ultimate end due to his negligence, this Court deems it appropriate to attribute 10% negligence on him.

5. So far as the quantum of compensation payable is concerned, inasmuch as the victim was proved to have been a qualified Physiotherapist in terms of Exs.P5 and P6, it cannot be ignored that he would be still earning something out of his qualification beyond his regular employment. Taking the overall picture, this Court considers that fixing the monthly income of Rs.25,000/- would be most appropriate. Fixing the monthly income at Rs.25,000/-, adding another 40% towards future prospects of increase in income, applying '16' as the multiplier and reducing the same by half (that the other half going to meet the personal expenses of the victim), the sum payable as compensation on the



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head of loss of dependency will be Rs.33,60,000/-. From this, 10% is deducted towards negligence of the victim in not wearing helmet and then, the loss of dependency would be at Rs.30,24,000/-. As to the other conventional heads, this Court retains the same. However, this Court notices that the victim has a long battle for about six months with his injuries before he died. Therefore, this Court awards Rs.2,00,000/- towards pain and suffering of the victim. Accordingly, this Court determines the total compensation at Rs.42,74,000/-. The award will now look as below:

S.No	Description	Amount awarded (Rs.)
1.	Loss of Pecuniary Benefits	30,24,000
2.	Loss of Estate	15,000
3.	Funeral Expenses	15,000
4.	Consortium (1 st petitioner and 2 nd petitioner are entitled to Rs.40,000/- each)	80,000
5.	Medical Bills	9,40,000
6.	For pain and suffering	2,00,000
	Total	42,74,000



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6. In fine, this Court partly allows the appeal and the compensation is reduced from Rs.58,88,400/- to Rs.42,74,000/-. This Court is informed that the Insurance Company had deposited Rs.30,00,000/- with interest and costs before the Tribunal and it is now required to deposit the balance with interest at 7.5% throughout, within a period of eight weeks from the date of receipt of a copy of this judgement. On such deposit, the respondents 1 and 2/claimants 1 and 2 are entitled to withdraw their share as apportioned by the Tribunal with proportionate interest and costs. No Costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.S., J.) (P.V.M., J.)
18.07.2024

NCC : Yes/No

Index : Yes/No

PM

To

1.The Motor Accident Claims Tribunal/

District and Sessions Judge, Communal Clash Cases Court, Madurai.

2.The Section Officer,

Vernacular Records,

Madurai Bench of Madras High Court,

Madurai.



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