



C.M.A(MD)No.427 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.427 of 2021

- 1.Rajeswari
- 2.Minor.Arivalagan
- 3.Minor.Agalya
- 4.Sangilikaruppan (Died)
- 5.Poomayee
- 6.Minor.Abinaya

... Appellants

*(Minors represented by their Mother
and natural guardian 1st Appellant herein)*

*(Memo, dated 30.11.2023, filed on 01.12.2023
in USR No.41672, is recorded as 4th appellant
died and 5th appellant who is already on record
is recorded as LR of the deceased 4th appellant
vide Court order dated 11.01.2024 made in
C.M.A.(MD)No.427 of 2021)*

Vs.

- 1.N.Raja
- 2.The Branch Manager,
United India Insurance Company Limited,
No.146/N, 2nd Floor,
Kumar Complex, Anna Salai,
Thiruchengodu.

... Respondents



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree, dated 31.01.2020, made in M.C.O.P.No.489 of 2016, on the file of the by the Motor Accident Claims Tribunal (Additional District Court), Pudukkottai.

For Appellant : Mr.A.V.Rajasekaran
For R1 : No Appearace
For R2 : Mr.I.Robert Chandra Kumar

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimants for enhancement.

2. It is a case of fatal. The contention of the claimants is that the Tribunal has fixed 50% contributory negligence on the deceased for the reason the deceased was not having license. But the Hon'ble Supreme Court in the case of **Sudhir Kumar Rani Vs. Surinder Singh** reported in **(2008) 12 SCC 436** has held that contributory negligence cannot be fixed merely because the deceased did not possess driving license. The Hon'ble Division Bench of this Court in C.M.A. (MD)No.23 of 2017, vide judgment, dated 22.11.2018, in the case of **Branch Manager Vs. Uma Rani and others** had also held that deduction of 25% from the compensation towards contribution negligence is not sustainable, merely because



the deceased did not possess driving license. It is a settled proposition that the contributory negligence cannot be fixed if license is not available and hence following the same this Court is of the considered opinion that the Tribunal had erred in fixing 50% contributory negligence on the deceased for not having driving license.

3. The next contention of the claimants is that the salary fixed by the Tribunal is on a lower side because the deceased was working as Driller and was earning Rs.19,000/- and he was also working as agriculture coolie and was earning Rs.10,000/- but the Tribunal is fixed the salary as Rs.7,500/-. The claimants have filed Ex-7 and Ex-8 to prove that the deceased was working as Driller. However, the claimants have not filed any evidence before the Tribunal to show that the deceased was working as agriculture work. After hearing the submission this Court is of the considered opinion that the Tribunal has erred in fixing the salary as Rs.7,500/-. Even if there is no evidence, the minimum salary that is fixed is Rs.8,000/-. When evidence is submitted, the salary of the deceased ought to be fixed as Rs.12,000/-. Therefore, this Court is fixing the salary as Rs. 12,000/-. The compensation granted by the Tribunal under the other heads are confirmed.



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4. The contention of the 2nd respondent is that the deceased was driving without any license. Moreover, the deceased has violated the policy of the Insurance Company by driving the vehicle in the State of Kerala, since the policy is covering only in the State of Tamil Nadu. For these two lapses, the learned Counsel appearing for the 2nd respondent pleaded to fix the contributory negligence on the deceased. However, this Court is rejecting the said plea.

5. The modified compensation granted by this Court is as under:

i.	Monthly income of the deceased	Rs.12,000/-
ii.	Future prospects (40%)	Rs.4,800/-
Total income		Rs.16,800/-
1/4 th income deducted towards personal expenses		Rs.4,200/-
After deduction of personal expenses		Rs.12,600/-



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Sl.No.	Head of Compensation	Modified award granted by this Court	Award granted by the Tribunal
1.	Loss of Income (Rs.12,600*12*16)	Rs.24,19,200/- (enhanced)	Rs.15,12,000/-
2.	Loss of Estate	Rs.50,000/- (confirmed)	Rs.50,000/-
3.	Loss of Love and Affection (to minor claimants Rs. 25,000/- each and for 4 th and 5 th claimants Rs.15,000/- each)	Rs.1,05,000/- (confirmed)	Rs.1,05,000/-
4.	Transportation	Rs.20,400/- (confirmed)	Rs.20,400 /-
5.	Funeral Expenses	Rs.15,000/- (confirmed)	Rs.15,000/-
Enhanced Total compensation granted by this Court		Rs.26,09,600/- (enhanced)	Total = Rs.17,02,400/- After deducting 50% for contributory negligence, total compensation granted by the Tribunal = Rs. 8,51,200/-

6. The 2nd respondent Insurance Company shall deposit **Rs.26,09,600/-** 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 eight weeks from the date of receipt of a copy of this judgment. The Tribunal had order for pay and recovery and the same is confirmed, hence the Insurance Company shall pay and recover the same from the 1st respondent herein. On such deposit, the claimants are permitted to withdraw their shares with proportionate



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accrued interests and costs in the ratio fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. Since the 4th claimant / 4th appellant herein has died, his share shall be withdrawn by his legal heir, i.e., 5th claimant / 5th appellant herein. The Tribunal is directed to deposit the shares of the minor children in a nationalized bank in the names of the children until the children attain majority. The first appellant herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. Once the minor claimants attain majority they are permitted to withdraw their shares. Since this Court is enhancing the compensation, the claimants are liable to pay the balance Court fee.

7. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

01.02.2024

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

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- 1.Motor Accident Claims Tribunal
(Additional District Court), Pudukkottai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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