



C.M.A(MD)No.1139 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1139 of 2021

and

C.M.P.(MD)Nos.11005 of 2021 and 14594 of 2023

Legal Officer (TP Claims),
Sriram General Insurance Company Limited,
Opposite Lady Tok College,
Near ICICI Bank, First Floor,
Chinnasokkikulam, Madurai.

... Appellant

Vs.

1.M. Lakshmi
2.Minor Senthilnathan
3.Minor Thirumurugan
4.Mariammal
5.Murugeshwari

... Respondents

(Minor respondents are represented through
their next friend, guardian and mother
1st respondent herein)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against award and decree, dated 12.11.2019, made in M.C.O.P.No.102 of 2017 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Theni.



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For Appellant : Mr.V.Sakthivel
For R1 to R4 : Mr.K.Suresh Kumar
For R5 : No Appearance

JUDGMENT

The Insurance Company has filed this Civil Miscellaneous Appeal.

2. It is a case of fatal. Five persons have travelled in the vehicle, one person died and the rest of them were injured. The contention of the claimants is that he was travelling in the vehicle as Loadman and the Tribunal has also taken the deceased as Loadman. There is no contra evidence to reject the finding that the deceased was travelling in the vehicle as Loadman.

3. The contention of the Insurance Company before this Court is when five persons had travelled, then they should be considered as gratuitous passenger and not as Loadman. But the claimants submitted that the deceased and the other persons were travelling as Loadmen and they were supposed to pick up fish which would be purchased in Madurai Market. After hearing the arguments this Court is of the considered opinion that the deceased was travelling as a Loadmen only and not as a gratuitous passenger.



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4. The next contention of the Insurance Company is that the deceased has not filed any iota of evidence to prove his salary but the Tribunal has taken the salary as Rs.13,302/- which is on a higher side. When a person was working as Loadman, the notional salary fixation should be on a lesser side unless there is some proper acceptable evidence.

5. Therefore, this Court is fixing the notional salary of the deceased as Rs. 10,000/-. Since five persons were travelling, the owner of the vehicle is at wrong. Therefore, this Court is granting pay and recovery. As far as loss of love and affection is concerned, the Tribunal has granted Rs.1,60,000/-, the same is reduced to Rs.1,20,000/- (i.e., Rs.40,000 * 3) by this Court, since there are only three claimants other than the wife. Moreover, loss of consortium is already granted to the wife to the tune of Rs.40,000/- and the same is confirmed. The compensation granted under the other heads are confirmed.

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

i.	Monthly income of the deceased	Rs.10,000/-
ii.	Future Prospects (10%)	Rs.1,000/-
Total		Rs.11,000/-
1/4 th of income deducted towards personal expenses		- Rs.2,750/-
After deduction		Rs.8,250/-



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Sl. No.	Heads	Award granted by Tribunal	Award granted by this Court	Enhanced / Confirmed / Reduced
1.	Loss of Income	Rs.11,85,192/- (Rs.10,974*12*9)	Rs.8,91,000/- (Rs.8,250*12*9)	Reduced
2.	Loss of Love and Affection	Rs.1,60,000/-	Rs.1,20,000/-	Reduced
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of Amenities	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
	Total	Rs.14,15,192/-	Rs.10,81,000/-	Reduced

Therefore, the total compensation granted by the Tribunal is reduced from Rs. 14,15,192/- to Rs.10,81,000/- by this Court.

7.The appellant Insurance Company is directed to deposit Rs.10,81,000/- (Rupees Ten Lakh Eighty One Thousand only) 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. On such deposit, the claimants are permitted to withdraw their shares (the claimants 1 to 4 are entitled to Rs.3,10,000/-, Rs. 2,25,000/-, Rs.2,25,000/- and Rs.3,21,000/- respectively) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The appellant Insurance



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Company is entitled to recover the same from the owner of the vehicle / 5th respondent herein, by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**. The Insurance Company shall withdraw the excess amount, if any. The Tribunal is directed to deposit the shares of the minor children in a nationalized bank until the children attain majority. The first respondent 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 with accrued interests.

8. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

18.03.2024

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

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To

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- 1.Motor Accident Claims Tribunal /
Chief Judicial Magistrate, Theni.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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