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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 13.03.2024**

**CORAM**

**THE HON'BLE MRS.JUSTICE S.SRIMATHY**

**C.M.A(MD)Nos.396 & 646 of 2022**

**and**

**C.M.P(MD)Nos. 3509 & 7128 of 2022**

**C.M.A(MD)No.396 of 2022**

The Branch Manager,  
United India Insurance Company Limited  
Having its Office at Kar Towers,  
2nd Floor, R.S. Road,  
Dindigul.

... Appellant

**Vs.**

1. Baluthai
2. Minor Saran
3. Minor Menaka
4. Uliappan
5. Savadammal
6. N.Selvavel

... Respondents

*[Minor respondents 2 & 3 represented through natural guardian/mother/  
1<sup>st</sup> respondent/Baluthai]*

**C.M.A(MD)No.646 of 2022**

1. Baluthai
2. Minor Saran
3. Minor Menaka
4. Uliappan



5. Savadammal

... Appellant

*[Minor respondents 2 & 3 represented through natural guardian/mother/  
1<sup>st</sup> respondent/Baluthai]*

Vs.

1. N.Selvavel

2. The Branch Manager,  
United India Insurance Company Limited,  
KAR Towers, 2<sup>nd</sup> Floor,  
R.S. Road, Dindigul.

... Respondents

**COMMON PRAYER:** Civil Miscellaneous Petitions are filed under section 173 of Motor Vehicles Act to set aside the order, dated 14.12.2020 passed in M.C.O.P. No. 774 of 2017 on the file of the Motor Accident Claims Tribunal / Principal District Court, Dindigul.

**In C.M.P(MD)No.396 of 2022**

For Appellant : Mr.N.Dilip Kumar

For Respondents : M/s.S.Vijaya Shanthi, for R-1 to R-5

R-6 – No appearance

**In C.M.P(MD)No.646 of 2022**

For Appellant : M/s.S.Vijaya Shanthi

For Respondent : Mr.N.Dilip Kumar

**COMMON JUDGEMENT**

The Insurance Company has filed C.M.A(MD)No.396 of 2022 and the claimant has filed C.M.A(MD)No.646 of 2022 against the Order, dated 14.12.2020 passed in M.C.O.P. No. 774 of 2017 on the file of the Motor Accident Claims Tribunal / Principal District Court, Dindigul.



2. The contention of the Insurance Company is that the deceased has also contributed for the accident and had relied on the rough sketch and other reports. In the alleged accident, two two-wheelers were involved. It is stated in the final investigation report, the deceased has also contributed in the alleged accident and he has also Tortfeasor. The Rough sketch also indicates that the insured vehicle was marked on the extreme left side of the road.

3. Further contention is that the deceased was not wearing helmet at the time of accident and license of the deceased was also not produced before the Tribunal. Hence, the Insurance company prays to fix contributory negligence on the deceased as well.

4. The Learned Counsel appearing for the claimants submitted that the accident had occurred in the middle of the road. Since the body was found on the extreme left side of the road it cannot be stated that the accident occurred due to the negligence of the deceased. Further it is not conclusive evidence to prove the deceased also contributed to the accident.

5. After hearing the arguments in order to meet the ends of justice this Court is inclined to reduce the compensation since the deceased was not wearing helmet. It is seen that the deceased had head injury, which indicates



that the deceased was not wearing helmet at the time of accident. Also, the license of the deceased was not produced before the Tribunal.

6. In view of the aforesaid reasons and for manner of the accident, this Court is fixing 30% contributory negligence on the deceased and 70% on the Insurance Company.

7. As far as the enhancement is concerned, the Insurance Company has fixed salary of the deceased as Rs.7,000/-. However, the deceased was running Tea stall as well as Travel Agency. The accident was occurred on 01.09.2017. Even as per *Syed Sadiq's case* minimum salary ought to be fixed as Rs.6,500/- for the accident occurred in the year 2008. In the present case, the accident was occurred in the year 2017, therefore, the salary fixed by the Tribunal as Rs.7,000/- is on lower side. Hence, this Court is fixing the salary of the deceased as Rs.12,000/-per month.

|                              |                  |
|------------------------------|------------------|
| Monthly salary is            | Rs.12,000/-      |
| ADD 40% future prospectus    | Rs. 4,800        |
|                              | -----            |
|                              | Rs.16,800/- x 12 |
| Annual income is             | Rs.2,01,600/-    |
| DEDUCT 1/4 personal expenses | Rs.1,51,200/-    |
| 15 multiplier is applied     | Rs.22,68,000/-   |



7. The Tribunal has granted a sum of Rs.40,000/-consortium to the wife, but this Court is fixing Rs.50,000/-as consortium. For loss of love and affection this Court is granting a sum of Rs.1,60,000/- and for transport expenses this Court is fixing Rs.4,000/-.

8. Accordingly, the claimants are entitled for compensation as follows:

| S. No.       | Description                                             | Amount awarded by     |                       | Award confirmed / enhanced / granted |
|--------------|---------------------------------------------------------|-----------------------|-----------------------|--------------------------------------|
|              |                                                         | Tribunal              | this Court            |                                      |
| 1.           | For loss of dependency                                  | Rs.13,23,000/-        | Rs.22,68,000/-        | enhanced                             |
| 2.           | For loss of estate                                      | Rs. 15,000/-          | Rs. 15,000/-          | confirmed                            |
| 3.           | For loss of consortium to the wife                      | Rs. 40,000/-          | Rs. 50,000/-          | enhanced                             |
| 4.           | For filial consortium to the minor children and parents | --                    | Rs.1,60,000 /-        | granted                              |
| 6.           | For Funeral expenses                                    | Rs. 15,000/-          | Rs. 15,000/-          | confirmed                            |
| 7.           | For Transport expenses                                  | Rs. 10,000/-          | Rs. 4,000/-           | reduced                              |
| <b>Total</b> |                                                         | <b>Rs.14,03,000/-</b> | <b>Rs.25,12,000/-</b> |                                      |

This Court is enhancing the compensation as **Rs.25,12,000/-**, from the total compensation of **Rs.14,03,000/-**-granted by the Tribunal.

9. Accordingly, this Court is enhancing a sum of **Rs.25,12,000/-**, as compensation, from the compensation granted by the Tribunal **Rs.14,03,000/-**.

Since this Court is fixing contributory negligence on the deceased as 30% and



70% on the insurance company, the Insurance Company is directed to deposit 70% of the entire compensation amount i.e. Rs.17,58,400/-with 7.5% interest along with costs, within a period of 12 weeks from the date of receipt of a copy of the order, less the amount if already deposited. On such deposit being made, the claimants-1, 4 & 5 are permitted to withdraw their respective share as apportioned by the Tribunal and the share of the minor claimants 2 & 3 is to be deposited in anyone of the Nationalised Bank till they attains majority. The 1<sup>st</sup> claimant/mother is permitted to withdraw the interest amount of the deposited amount of the minor claimants 2 & 3 one in three months. Since this Court is enhancing the compensation, the claimants are liable to pay the balance Court fee, if not already paid.

10. With these observations, these Civil Miscellaneous Appeals are partly allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

**22.02.2024**

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

1. The Motor Accident Claims Tribunal /  
Principal District Court,  
Dindigul.
2. The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SRIMATHY, J.**

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**Common Order made in  
C.M.A(MD)Nos.396 & 646 of 2022**

**13.03.2024**