



C.M.A.(MD) No.1142 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1142 of 2024

1.Jose

S/o.Anthony Pillai

2.Selvarani

W/o.Jose

3.Maneesha

D/o.Jose

4.Manoj

S/o. Jose

... Appellants

Vs.

1.M.Balaji

S/o.Mani

2.P.Subramania Pillai

S/o.Parameswaran Pillai

3.National Insurance Company Ltd.,

rep. by its Branch Manager,

North Car Street, 1st Floor,

Anguvilas Building,

Near Head Post Office,

Nagercoil-1, Nagercoil Village,

Agateeswaram Taluk,

Kanyakumari District.

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award amount in M.C.O.P.No.23 of 2021 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Nagercoil, dated 11.12.2023.

For Appellants : Mr.C.Sankar Prakash

For R2 : No appearance

For R3 : Mr.N.S.Ramakrishnadoss

J U D G M E N T

The instant appeal has been filed by the claimants seeking enhancement of compensation awarded by the Tribunal.

2. Since the Tribunal's findings on negligence and liability are not under challenge, the facts leading to the filing of the claim petition are unnecessary for the disposal of this appeal.

3. The learned counsel for the appellants/claimants submitted that though there is evidence on record that the deceased was working as a fisherman, the Tribunal has fixed a meagre notional income of the deceased and that the contributory negligence fixed by the Tribunal on the



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deceased at 10% is erroneous and is not based on the records, and hence prayed for enhancement of the compensation.

4. The learned counsel for the third respondent, Insurance Company, submitted that no documentary evidence was produced by the appellants either to prove the avocation or the income of the deceased, and normally, the Fisheries Department, Government of Tamil Nadu, would certify if a person is a fisherman, and hence, the quantum of compensation awarded by the Tribunal is just and reasonable and no interference is called for.

5. The points for consideration in the instant appeal are: (a) whether the Tribunal's finding as regards the contributory negligence is justified; and (b) whether the quantum of compensation awarded by the Tribunal is just and reasonable.

6. As regards the first point, it is seen that P.W.2, the eyewitness to the occurrence, admitted before the Tribunal that the deceased did not wear a helmet at the time of the accident. In view of the same, this Court is of the view that the contributory negligence fixed by the Tribunal on the deceased cannot be faulted, as the learned counsel for the appellants is



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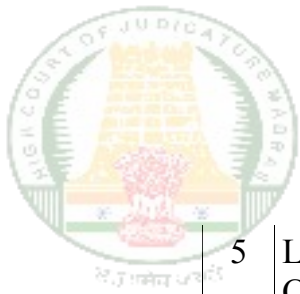
unable to point out any infirmity in the fixation of contributory negligence.

7. As regards the quantum of compensation, it is seen that the accident took place in the year 2016. The claimants have not produced any documentary evidence to prove the avocation and the income of the deceased. However, considering the age (22) and avocation of the deceased and the year of the accident, this Court is of the view that the notional income can be fixed at Rs.14,000/- per month. The compensation under the head loss 'loss of dependency' would be Rs.21,16,800/- [Rs. 14,000/- + 40% x 12 x 18 x 1/2].

8. The compensation under the other heads is just and reasonable.

Thus, the total compensation is modified as follows:

<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or reduced</i>
1	Loss of Dependency	Rs.19,65,600/-	Rs.21,16,800/-	Enhanced
2	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4	Loss of Filial Consortium to the first and second claimants	Rs. 80,000/-	Rs. 80,000/-	Confirmed



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5	Loss of Sibling Consortium to the third and fourth claimants	Rs. 80,000/-	Rs. 80,000/-	Confirmed
Total		Rs.21,55,600/-	Rs.23,06,800/-	Enhanced by Rs.1,51,200/-

9. After deducting 10% contributory negligence, the third respondent, Insurance Company, is liable to pay a sum of Rs.20,76,120/- [Rs.23,06,800 – Rs.2,30,680/-].

10. The third respondent, Insurance Company, is directed to deposit the aforesaid amount of Rs.20,76,120/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization, after deducting the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment.

11. On such deposit, the third and fourth appellants/third and fourth claimants, who are the siblings of the deceased, are entitled to Rs.50,000/- each, and the balance amount shall be shared equally by the first and second appellants/first and second claimants, who are the parents of the deceased.



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12. The appellants/claimants are permitted to withdraw their shares along with proportionate interest and costs, less the amount already withdrawn, if any, by filing suitable application before the Tribunal.

13. The appellants/claimants shall pay the court fee for the enhanced amount, if any.

14. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Principal Sub Judge,
Motor Accident Claims Tribunal,
Nagercoil,
Kanyakumari District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

JEN

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