



C.M.A.(MD) No.402 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2024

CORAM

**THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.(MD) No.402 of 2024**

and

**C.M.P.(MD) No.5377 of 2024**

The Branch Manager,  
The Oriental Insurance Company Limited,  
Madhava Complex 1<sup>st</sup> Floor,  
New Natham Mile Road,  
Narayanapuram,  
Madurai Town and District.

... Appellant

Vs.

- 1.Vijaya  
W/o.Late.Veeraiah
  - 2.Kala  
W/o.Late.Rasu
  - 3.Minor.Hariharasudhan  
S/o.Late.Rasu
  - 4.Minor.Haritha  
D/o.Late.Rasu
- [Minor R3 & R4 are represented by their  
guardian, next friend and mother, R2]
- 5.Subbukannu  
S/o.Late.Rasu



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6.Selvaganapathy  
S/o.Chokkalingam

... Respondents

[R6 given up]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree passed in M.C.O.P.No.147 of 2020 dated 11.08.2022 on the file of the Motor Accident Claims Tribunal cum Additional District Court, Pudukottai.

For Appellant : Mr.C.Jawahar Ravindran

For R1 to R5 : Mr.H.Arumugam

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### **J U D G M E N T**

The instant appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal.

2. Since the 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 appellant, Insurance Company, submitted that the Tribunal had fixed the age of the deceased as 60 years



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based on the postmortem report marked as Ex.P2, whereas the driving licence marked as Ex.P6 shows the date of birth of the deceased as 05.09.1943, and therefore, the deceased was 76 years old at the time of the accident; and that the multiplier applied by the Tribunal is thus erroneous and therefore prayed for reduction of the compensation.

4. The learned counsel for the first to fifth respondents/claimants submitted that the notional income fixed by the Tribunal was meagre, and the overall compensation awarded by the Tribunal was also meagre; that the second to fourth respondents/second to fourth claimants were awarded meagre compensation under the head 'loss of consortium', and therefore prayed for an enhancement of compensation.

5. The only point for consideration in the instant appeal is whether the Tribunal has awarded just and reasonable compensation.

6. Though Ex.P2, the postmortem report, suggests that the deceased was 60 years old, this Court finds from Ex.P6, the driving licence of the deceased, that he was born on 05.09.1943 and was 76 years old at the time of the accident. The age mentioned in Ex.P2, the postmortem report, is an



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approximate age determined by the doctors and cannot be the basis for fixing the age of the deceased in light of the other evidence on record.

Therefore, this Court holds that the age of the deceased was 76 years at the time of the accident.

7. However, this Court finds that the notional income fixed by the Tribunal at Rs.7,500/- per month is meagre, though the deceased was 76 years old. It appears that the deceased was the only male member of the family and was survived by the wife, the daughter-in-law, and the minor grandchildren. Considering the above, this Court is of the view that a sum of Rs.10,000/- per month can be fixed as notional income of the deceased.  $\frac{1}{4}^{\text{th}}$  has to be deducted towards personal expenses. The multiplier applicable is 5. Hence, the compensation under the head 'loss of income' would be Rs.4,50,000/-  $(10,000 \times 12 \times 5 \times \frac{3}{4})$ .

8. The total compensation of Rs.40,000/- awarded by the Tribunal to the second to fourth claimants under the head 'loss of love and affection' is contrary to the Judgment of the Hon'ble Supreme Court, as each of them is entitled to Rs.40,000/- and hence, the same is enhanced to Rs.1,20,000/-  $(Rs.40,000/- \times 3)$ .



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WEB COPY 9. The compensation under the other heads is just and reasonable.

Thus, the compensation awarded by the Tribunal is modified as follows:

| <i><b>Sl. No</b></i> | <i><b>Heads</b></i>                                          | <i><b>Amount awarded by the Tribunal</b></i>            | <i><b>Amount awarded by this Court</b></i> | <i><b>Award confirmed, reduced, enhanced or granted</b></i> |
|----------------------|--------------------------------------------------------------|---------------------------------------------------------|--------------------------------------------|-------------------------------------------------------------|
| 1                    | Loss of Income                                               | Rs.6,68,196/-                                           | Rs.4,50,000/-                              | Reduced                                                     |
| 2                    | Loss of consortium to the first claimant                     | Rs. 40,000/-                                            | Rs. 40,000/-                               | Confirmed                                                   |
| 3                    | Loss of estate                                               | Rs. 15,000/-                                            | Rs. 15,000/-                               | Confirmed                                                   |
| 4                    | Loss of love and affection to the second to fourth claimants | Rs. 40,000/-                                            | Rs.1,20,000/-                              | Enhanced                                                    |
| 5                    | Loss of love and affection to the fifth claimant             | Rs. 40,000/-                                            | Rs. 40,000/-                               | Confirmed                                                   |
| 6                    | Transport Expenses                                           | Rs. 10,000/-                                            | Rs. 10,000/-                               | Confirmed                                                   |
| 7                    | Funeral Expenses                                             | Rs. 15,000/-                                            | Rs. 15,000/-                               | Confirmed                                                   |
| <b>Total</b>         |                                                              | Rs.8,28,196/-<br>rounded off to<br><b>Rs.8,28,200/-</b> | <b>Rs.6,90,000/-</b>                       | Reduced by <b>Rs. 1,38,200/-</b>                            |

10. The appellant, Insurance Company, is directed to deposit the aforesaid modified amount of Rs.6,90,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization



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and costs, after deducting the amount already deposited, if any, within a period of 4 weeks from the date of receipt of a copy of this Judgment.

11. The first to fifth respondents are entitled to the compensation as per the apportionment fixed by the Tribunal.

12. The first, second, and fifth respondents are permitted to withdraw their shares along with the interest and costs, less the amount withdrawn, if any, by filing suitable application before the Tribunal.

13. Since the third and fourth respondents are minors, their shares are directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until they attain majority. The first respondent, who is their natural guardian, is permitted to withdraw the accrued interest once every six months.

14. The appellant, Insurance Company, is permitted to withdraw the excess amount already deposited, if any, together with interest, by filing suitable application before the Tribunal.



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WEB COPY 15. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Additional District Judge,  
Motor Accident Claims Tribunal,  
Pudukottai, Pudukottai District.
- 2.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**SUNDER MOHAN, J.**

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