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C.M.A(MD)No.160 of 2018



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.160 of 2018

1.J.Parveen

2.J.Mohammed Aarif (Minor)

3.J.Mohammed Farook (Minor)

4.J.Ayesha Samreen

... Appellants/Claimants

S.Piyarisaan (Died)

*(Minor Appellants 2 and 3 are represented
by their mother and next friend J.Parveen
first appellant)*

*(Fourth appellant is declared as major and
the guardianship of her mother / first
appellant - J.Parveen is discharged vide
Court order, dated 08.12.2023 made in
C.M.P(MD)No.9536 of 2023 in
C.M.A(MD)No.160 of 2018)*

Vs.

1.T.V.Shrinivas

2.HDFC ERGO Insurance Company Limited,
Represented through its Authorized signatory
Having office at New No.528,
Old No.599, 2nd Floor,
Annasalai, Thenampet,
Chennai-18.

... Respondents/Respondents



(First respondent ex parte in the lower Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 (1) of the Motor Vehicles Act, 1988 to allow the appeal and enhance the amount awarded in judgment and decree in M.C.O.P.No.480 of 2013, dated 17.06.2017 on the file of the District Motor Accident Claims Tribunal, Madurai.

For Appellants : Mr.C.Godwin

For R-1 : No appearance

For R-2 : Mr.N.Shyllappa Kalyan

JUDGMENT

The instant appeal has been filed challenging the award passed in M.C.O.P.No.480 of 2013 on the file of the District Motor Accident Claims Tribunal, Madurai, seeking enhancement of the compensation.

2. As per the claim petition, the deceased was aged about 44 years and he was a supplier of spare parts and he was earning a sum of Rs.10,000/- per month. The claimants have further contended that the deceased was riding a two-wheeler from South to North on the Eastern side of the mud road of the Chennai-Trichy bye pass road. At the relevant point of time, a car owned by the first respondent and insured with the



second respondent came from the opposite direction in a rash and negligent manner and dashed against the two-wheeler. Due to the said impact, the deceased had sustained grievous injuries and later he passed away. The claimants have sought for a compensation of Rs.15,00,000/-.

3. The Insurance Company has filed a counter contending that the deceased has travelled on the wrong side of the road in a National Highways and therefore, he has contributed to the accident. The Insurance Company has challenged the avocation, income and the quantum of compensation as prayed for also.

4. The Tribunal after considering the evidence on record has arrived at a finding that, the deceased had also contributed to the accident by riding a two-wheeler on the wrong side of the road and has deducted 25% of the compensation. The Tribunal has fixed the monthly income at Rs.9,000/- and thereafter, has deducted 1/4th towards personal expenses and applied a multiplier of 14 and has arrived at the loss of income at Rs.11,34,000/-. A sum of Rs.90,000/- has been awarded towards loss of consortium, a sum of Rs.1,50,000/- has been awarded towards loss of love and affection to the children of the deceased. Towards medical expenses, a sum of Rs.10,000/- has been awarded. A further sum of



Rs.10,000/- has been awarded towards funeral expenses and another sum of Rs.10,000/- has been awarded towards Transport Expenses. The Tribunal has awarded a sum of Rs.1000/- towards loss of Estate. A sum of Rs.10,53,750/- has been awarded. Seeking enhancement of this compensation, the present appeal has been filed.

5. According to the learned Counsel appearing for the appellant, there was no negligence on the part of the deceased person and he was riding his two-wheeler only on the extreme left side of the mud road and therefore, the Tribunal was not right in deducting 25% towards the contributory negligence. He further contended that the deceased was 44 years old and no amount has been awarded towards future prospects. He further sought for enhancement of compensation under the heads of funeral expenses and loss of estate.

6. Per contra, the learned Counsel appearing for the respondent has contended that the Tribunal has awarded Rs.90,000/- for the loss of consortium to the first claimant and Rs.1,50,000/- to the loss of love and affection to the children of the deceased and the same is on the higher side and he prayed for modifying the award with said effect. He further contended that 25% deduction by the Tribunal towards the contributory



negligence may be sustained.

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7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. A reading of the claim petition indicates that the deceased was riding a two-wheeler from South to North and he was sticking to the Eastern side of the mud road in Chennai-Trichy bye-pass road. Therefore, it is clear, even from the claim petition, that the deceased was travelling on the wrong side of National Highways. Therefore, I do not find any reason to interfere in the order of the Tribunal in deducting 25% towards contributory negligence.

9. The claimant is 44 years old and he was a Diploma Holder and he was self-employed. The Tribunal has arrived at the notional income of Rs.9,000/-. However, the Tribunal has not added any amount towards future prospects. Considering the fact that, he is aged about 44 years and self-employed, 25% could be added towards his future prospects. Therefore, the monthly income could be arrived at Rs.11,250/-. After deducting 1/4th towards personal expenses, the monthly income would be Rs.8,438/-. Applying the multiplier of 14, the loss of income would be



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8,438 X 12 X 14 = 14,17,584/-.

10. In view of the above said facts, the award amount of the Tribunal is re-assessed as follows:

S.No.	Heads	Compensation
01.	Loss of Income 8,438 X 12 X 14	Rs.14,17,584/-
02.	Loss of love and affection and consortium 40000 X 4	Rs.1,60,000/-
03.	Medical Expenses	Rs.10,000/-
04.	Funeral Expenses	Rs.15,000/-
05.	Transport Expenses	Rs.10,000/-
06.	Loss of Estate	Rs.15,000/-
	Total	Rs.16,27,584/-
	25% deduction towards contributory negligence	Rs.4,06,896/-
	Amount awarded to the claimant	Rs.12,20,688/-

11. In view of the above said facts, the award of the Tribunal is enhanced from Rs.10,53,750/- (Rupees Ten Lakhs Fifty Three Thousand Seven Hundred and Fifty only) to **Rs.12,20,688/- (Rupees Twelve Lakhs Twenty Thousand Six Hundred and Eighty Eight only)**. The award amount will carry 7.5% interest from the date of the claim petition. The balance amount shall be deposited by the Insurance Company within



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a period of eight (8) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant shall be entitled to withdraw the amount.

12. The appeal stands partly allowed to the extent as stated above.

The claimant shall share the amount as per the proportion laid down by the Tribunal. There shall be no order as to costs.

04.07.2024

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

To

1.The District Motor Accident Claims Tribunal,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.160 of 2018

04.07.2024