



C.M.A(MD)No.205 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2024

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.205 of 2018

1.P.Murugan

2.Minor Ramakrishnan

3.Minor Arunkumar

4.Minor Veerajothi

... Appellants/Claimants

*(Appellants 2-4 represented through their father and next friend  
P.Murugan)*

Vs.

1.P.Paramakrishnan

2.The Branch Manager,  
United India Insurance Company Ltd.,  
Seethalakshmi Complex,  
Tirunagar,  
Madurai-16.

... Respondents/Respondents

**Prayer:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to enhance the award of compensation passed in M.C.O.P.No.1087 of 2011, dated 28.04.2016 on the file of Motor Accident Claims Tribunal cum I Additional District Court, Madurai and enhance the award amount to the appellants.



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For Appellants : Mr.D.Srinivasaragavan

For R1 : No Appearance

For R2 : Mr.C.Jawahar Ravindran

### **JUDGMENT**

The present appeal has been filed by the claimants challenging the award passed in M.C.O.P.No.1087 of 2011 on the file of Motor Accident Claims Tribunal cum I Additional District Court, Madurai seeking enhancement of compensation.

2. The deceased was travelling as a pillion rider in a two wheeler on 06.04.2011 for attending a marriage. At that point of time, a lorry which was owned by the 1<sup>st</sup> respondent and insured with the 2<sup>nd</sup> respondent which was going ahead of the two wheeler had suddenly turned on the right side without any signal or indicator. Therefore, the two wheeler got dashed against the lorry and the in said accident, the pillion rider had sustained grievous injuries and she passed away.

3. The claimants have contended that the deceased was a Tailor and was earning a sum of Rs.15,000/- per month. They have further



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contended that the deceased had left her husband and 3 minor children.

They have prayed for a compensation of Rs.10,00,000/-.

4. The insurance company of the lorry has filed a counter contending that when the lorry has already taken a right turn, the rider of the two wheeler had dashed against the diesel tank. Therefore, it is clear that the entire negligence is on the part of the rider of the two wheeler and they are not liable to pay any compensation.

5. The tribunal after considering the oral and documentary evidence has arrived at a finding that both the rider of the two wheeler as well as the lorry driver were equally responsible for the accident and apportioned the liability at 50% on each of them. The tribunal has fixed the notional monthly income at Rs.3,000/- per month and thereafter proceeded to award a compensation of Rs.6,09,000/-. Challenging the said award, the present appeal has been filed by the claimants.

6. According to the learned counsel appearing for the appellants, the deceased being a pillion rider, the effect of negligence on the part of the rider of the two wheeler should not have been reflected upon the



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quantum of compensation to be paid to the pillion rider. He further contended that the deceased was a Tailor by profession. Therefore, the tribunal was not right in fixing the monthly notional income at Rs. 3,000/-. Instead, the Court ought to have fixed it Rs.15,000/- per month. He further contended that the amount awarded under the other heads are also on the lesser side and he prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the insurance company had contended that the Motor Vehicle's Inspector report would clearly reveal that the two wheeler had dashed against the diesel tank of the lorry and the same would indicate the negligence on the part of the rider of the two wheeler. Therefore, the tribunal was right in fixing 50% of liability upon the rider of the two wheeler. He further contended that there is no scope for further enhancement of compensation

8. I have carefully considered the submissions made on either side and perused the material records.

9. As admitted by either side, the deceased was a pillion rider and



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the two wheeler had dashed against the diesel tank of the lorry which had taken a right turn. The tribunal has arrived at a finding that the driver of the lorry had turned to the right side without any proper signal or any indicator light. Therefore, the tribunal was right in mulcting the liability upon the driver of the lorry. The tribunal has mulcted the balance 50% liability upon the rider of the two wheeler.

10. Considering the fact that the lorry driver would be in a higher position to notice the vehicles coming from behind, the tribunal was not right in fixing only 50% of liability upon the driver of the lorry. I am of the considered opinion that the driver of the lorry should have been fixed with 60% of liability.

11. As far as the quantum of compensation is concerned, the accident has taken place in the year 2011, the Hon'ble Supreme Court in the judgment reported in **2014 1 TN MAC 459 SC (Syed Sadiq & Others Vs. The Divisional Manager, United India Insurance Company Limited)** has fixed the monthly notional income at Rs.6,500/- for an accident that has taken place in the year 2008. Considering the fact that the accident has taken place in the year 2011, this Court is of the opinion



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that the notional income could be fixed at Rs.7,000/- per month. The age of the deceased is admittedly 30 years and therefore, the multiplier of 16 could be adopted. The family of the deceased consist of the husband and 3 minor children. Therefore, 1/4<sup>th</sup> could be deducted towards personal expenses.

12. In view of the above said discussions, the award of the Tribunal is re-assessed as follows:

| S.No<br>. | Heads                                                | Compensation          |
|-----------|------------------------------------------------------|-----------------------|
| 01.       | Loss of Income<br>5250 X 12 X 17                     | Rs.10,71,000/-        |
| 02.       | Loss of Consortium, Love and<br>affection (4x40,000) | Rs.1,60,000/-         |
| 03.       | Funeral Expenses                                     | Rs.25,000/-           |
| 04.       | Loss of Estate                                       | Rs.15,000/-           |
|           | Total                                                | <b>Rs.12,71,000/-</b> |
|           | 40% deduction towards<br>contributory negligence     | <b>Rs.5,08,400/-</b>  |
|           | Compensation payable to the<br>claimants             | <b>Rs.7,62,600/-</b>  |

13. The award of the Tribunal is enhanced from Rs.3,04,500/- (Rupees Three Lakhs Four Thousand and Five Hundred only) to **Rs. 7,62,600/- (Rupees Seven Lakhs Sixty Two Thousand and Six**



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**Hundred only).** The enhanced amount will carry 7.5% interest from the date of claim petition excluding the default period. The Insurance Company is directed to deposit the enhanced compensation within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants shall be entitled to withdraw the award amount on the following apportionment:

- (i) The first claimant shall be entitled to 40% of the award; and
- (ii) The claimants 2 to 4 each will be entitled to 20% of the award.

14. The Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs.

**01.07.2024**

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

1.The Motor Accident Claims Tribunal cum  
I Additional District Court,  
Madurai.

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



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**R.VIJAYAKUMAR,J.**

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Order made in  
C.M.A(MD)No.205 of 2018

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