



C.M.A. (MD) No. 701 of 2020

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Reserved on : 26.02.2024

Pronounced on : 08.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.701 of 2020

M/s.IFFCO TOKIO General Insurance
Company Ltd.,
represented by Manager,
Sri Nivasam Arcade, First Floor,
No.9/4, Advaidtha Ashram Road,
Salem.

... Appellant

Vs.

1. Siddarthan

2. Mariyammal

3. Sureshkumar

(Memo dated 07.02.2024, in USR No.4729, is
recorded, to the effect that issuance of notice to
3rd respondent is dispensed with, vide Court
order dated 07.02.2024 made in CMA(MD)No.
701 of 2020)

... Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, to set aside the judgment and decree dated 08.09.2020



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passed in M.C.O.P.No.288 of 2019 on the file of the Motor Accident Claims Tribunal Judge / Additional Sessions Judge of Karur by allowing this appeal.

For Appellant : Mr.V.Sakthivel

For R1 & R2 : Mr.K.Sudalaiyandi

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.288 of 2019 dated 08.09.2020 on the file of the Motor Accident Claims Tribunal/Additional Sessions Court, Karur.

2. The appellant/Insurer, who was directed to pay compensation of Rs.4,79,700/- (Rupees Four Lakhs Seventy Nine Thousand and Seven Hundred only) with interest at 7.5% per annum and costs to the respondents 1 and 2/claimants for the death of Palayi Ammal, consequent to an accident occurred on 09.03.2018, challenged the quantum of compensation awarded at, by the Tribunal.

3. The main contention of the appellant/Insurer is that the elder son of the deceased was shown to be aged 60 years, but the Tribunal has fixed



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the age of the deceased-mother at 64 years and that the Tribunal ought to have held that the deceased was aged more than 75 years at the time of accident.

4. No doubt, the appellant/Insurer has produced the legal heir certificate of the deceased Palayi Ammal under Ex.R1 before the Tribunal and whereunder, the age of the respondents 1 and 2/claimants Siddarthan and Mariyammal-son and daughter of the deceased are shown at 55 and 45 years respectively and another son Gowthaman, who was dead by then, was shown to be 60 years of age. But the Tribunal, without considering the above contention of the appellant/Insurer and without taking note of Ex.R1-Legal heir certificate, by relying on Ex.P2-Postmortem certificate, has fixed the age of the deceased at 64 years. Admittedly, the respondents 1 and 2/claimants have not disputed the genuineness or contents of Ex.R1-Legal heir certificate and they have also not specifically disputed that their elder brother Gowthaman was shown to be aged 60 years in 2018. As already pointed out, the accident was occurred on 09.03.2018. Considering the above, fixing the age of the deceased at 64 years cannot be sustained. But at the same time, in the absence of any other evidence and taking note



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of the age of the respondents 1 and 2/claimants and the elder son of the deceased, this Court fixes the age of the deceased at 75 years.

5. The case of the respondents 1 and 2/claimants is that the deceased was doing coolie work and was earning Rs.15,000/- per month. In the absence of any evidence to show the income of the deceased, the Tribunal, taking note of the judgment of the Division Bench of this Court reported in **2019 (1) TN MAC 54**, has fixed the monthly income of the deceased at Rs.6,000/- and as such, the same cannot be found fault with. The Tribunal has rightly deducted $1/3^{\text{rd}}$ of the income towards personal and living expenses of the deceased. Since this Court has fixed the age of the deceased at 75 years, as per the decision of the **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the appropriate multiplier would be 5. Hence, the loss of dependency would be Rs.2,40,000/- (Rupees Two Lakhs and Forty Thousand only) {Rs.4,000/- x 12 x 5}.

6. The Tribunal has rightly awarded Rs.40,000/- each to the respondents 1 and 2/claimants for loss of parental consortium. The



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Tribunal, taking note of the Ex.P7-medical bill, has rightly granted Rs.33,700/- towards medical expenses. The Tribunal has also awarded Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses under the conventional heads. Considering the above, the respondents 1 and 2/ claimants are entitled to get total compensation of Rs.3,83,700/- (Rupees Three Lakhs Eighty Three Thousand and Seven Hundred only). Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	3,36,000	2,40,000	Reduced
2.	Loss of consortium	80,000	80,000	Confirmed
3.	Loss of estate	15,000	15,000	Confirmed
4.	Funeral expenses	15,000	15,000	Confirmed
5.	Medical expenses	33,700	33,700	Confirmed
	Total	4,79,700	3,83,700	Reduced by Rs.96,000/-



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7. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,79,700/- (Rupees Four Lakhs Seventy Nine Thousand and Seven Hundred only) is hereby reduced to **Rs.3,83,700/- (Rupees Three Lakhs Eighty Three Thousand and Seven Hundred only)**. The appellant/Insurer is directed to deposit the modified reduced amount with interest at 7.5% per annum and costs to the credit of M.C.O.P.No.288 of 2019 from the date of claim petition till the date of deposit on the file of the Motor Accident Claims Tribunal/ Additional Sessions Court, Karur, excluding the default period, if any, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. Out of the said compensation amount, the respondents 1 and 2/claimants are entitled to get **Rs.1,91,850/- (Rupees One Lakh Ninety One Thousand Eight Hundred and Fifty only)** each. Accordingly, the respondents 1 and 2/claimants are permitted to withdraw their shares along with accrued



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interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. If the amount was already deposited by the appellant/insurer, the balance amount shall be withdrawn by them. The parties are directed to bear their own costs.

08.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accident Claims Tribunal/
Additional Sessions Court, Karur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

**Pre-Delivery Order made in
C.M.A.(MD)No.701 of 2020**

Dated : 08.03.2024