



C.M.A.(MD)No.413 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **19.09.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.413 of 2016
and C.M.P(MD)No.5610 of 2016

The Oriental Insurance Company Limited,
Represented by its Regional Manager,
K.J.R.Complex,
North Veli Street,
Madurai.

...Appellant/2nd Respondent

Vs.

1.Raja Priyanka
2.Minor Sai Santhosh
3.Naga Rathinam
4.Abuthalib

...Respondents 1 to 3/Petitioners 1 to 3
...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 28.01.2016 passed in M.C.O.P.No.1266 of 2012 on the file of the Motor Accident Claims Tribunal cum V Additional District Judge, Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For R1 to R3 : Mr.M.Rajendran

R4 : Exparte



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JUDGMENT

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The instant appeal has been filed challenging the finding on negligence and the quantum of compensation awarded by the Tribunal.

2. The respondents 1 to 3/claimants filed a claim petition stating that while the deceased was standing at Trichy-Thanjavur road near the median, a minibus insured with the appellant came in a rash and negligent manner and dashed against the deceased, causing fatal injuries to him.

3. The owner of the minibus/4th respondent herein remained exparte before the Tribunal.

4. The appellant filed a counter stating that the accident took place due to the negligence of the deceased, as he ought not to have stood in the middle of the road in violation of the traffic rules; that therefore, they are not liable to pay compensation; and that in any case, the compensation claimed was excessive.



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5. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.11. The appellant examined R.W.1 and they have not marked the document.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the negligence of the insured vehicle and directed the appellant to pay a total compensation of Rs.21,46,000/-.

7. The learned counsel for the appellant submitted that the only challenge is with regard to the quantum of compensation awarded by the Tribunal; that since the deceased was a private employee, the Tribunal ought not to have added 50% to the income towards future prospects; and that the compensation awarded under the other heads is also excessive.

8. Per contra, the learned counsel for the respondents 1 to 3/claimants submitted that the award of compensation is just and reasonable and that the compensation awarded under the head loss of consortium is meagre and prayed for enhancement of compensation.



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9. I have given my anxious consideration to the submissions made on either side and carefully perused the materials available on record.

10. The points for consideration in the instant appeal are as follows:

- a) Whether the finding on negligence by the Tribunal is justified; and
- b) Whether the quantum of compensation awarded by the Tribunal is just and reasonable.

11. As regards the first point, it is seen that the claimants had examined P.W.2, an eyewitness to the occurrence besides marking the copy of the first information report, Ex.P.2, a certified copy of the Motor Vehicle Inspector's report, Ex.P.4, to corroborate the version of P.W.2. As regards the manner of the accident, the appellant has not produced any contra evidence. In the light of the evidence let-in on the side of the claimants, this Court is of the view that the finding on negligence by the Tribunal is justified. The point No.1 is answered accordingly.

12. As regards the quantum of compensation, it is seen that the Tribunal had fixed the notional income of the deceased at Rs.10,000/- as



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P.W.1, the mother of the deceased/the 3rd claimant had deposed that the deceased was engaged in jewellery business and was earning Rs.20,000/- per month and in support of the same, produced Ex.P.7, the income tax returns for the assessment years 2008-2009 and 2009-2010. However, the said documents do not prove the exact income of the deceased This Court is of the view that considering the nature of evidence produced on the side of the claimants, the notional income fixed by the Tribunal is just and reasonable. However, the Tribunal ought to have added 40% towards future prospects instead of 50%. The multiplier applicable is "17". Considering the number of dependents, 1/3rd has to be deducted towards personal expenses. Hence, the award of compensation under the head 'loss of income' has to be $(Rs.10,000 + Rs.4,000 \times 12 \times 17 \times 2/3)$ Rs.19,04,000/- .

13. Further, it is seen that the Tribunal awarded Rs.1 lakh to all the four claimants for loss of consortium and loss of love and affection. The claimants are entitled to Rs.40,000/- each. Though the fourth claimant/the father of the deceased died during the pendency of the claim petition, all the four claimants are entitled to Rs.40,000/- each. The award of compensation under the other heads is just and reasonable and



hence confirmed. The point No.2 is answered accordingly. Thus, the award of compensation is modified as follows:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Transport to hospital	1,000.00	1,000.00	Confirmed
2.	Funeral Expenses	5,000.00	5,000.00	Confirmed
3.	Loss of consortium to the 1 st petitioner	50,000.00	40,000.00	Reduced
4.	Loss of love and affection to 3 other claimants	50,000.00	1,20,000.00	Enhanced
5.	Loss of income	20,40,000.00	19,04,000.00	Reduced
Total :		21,46,000.00	20,70,000.00	Reduced

14. The appellant is directed to deposit the modified compensation with accrued interest at the rate of 7.5% from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the amount by filing a suitable application as per the apportionment fixed by the Tribunal. As regards the amount awarded to the minor claimant, the same shall be deposited in a nationalized bank and the guardian of the minor is



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permitted to withdraw interest once every three months directly from the bank till he attains majority. If the appellant has deposited any excess amount, it is open to them to file an application seeking refund of the excess amount before the Tribunal.

15. In fine, this appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

19.09.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. Motor Accident Claims Tribunal cum V Additional District Judge,
Madurai.

2. The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court, Madurai.



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SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No.413 of 2016
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