



C.M.A.(MD) No.1387 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1387 of 2024

and

C.M.P.(MD)No.15027 of 2024

United India Insurance Company Ltd.,
Through its Branch Manager,
Sri Sai Kamatchi Complex,
Opposite Government Arts College,
Siraichalai Road,
Selam Town and District – 636 007.

... Appellant

Vs.

1.Priya,
2.Vignesh,
3.Ravichandran.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 14.03.2024 passed in M.C.O.P.No.20 of 2023, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Sivagangai.



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For Appellant : Mr.K.Jeyamohan
for Mr.I.Robert Chandra Kumar

For Respondents
for R1 : Mr.G.Mohankumar
for R2 & 3 : Dispensed with

J U D G M E N T

The instant appeal has been filed by the Insurance Company seeking reduction of the compensation.

2. Since the findings on negligence and liability are not under challenge, the facts leading to the filing of the claim petition are not necessary for the disposal of this appeal.

3. The learned counsel for the appellant would submit that the claimant is the married sister of the deceased, who was living separately; that their parents are no more and there is no evidence to show that she was dependant on the deceased and therefore, the award of the Tribunal under the head 'loss of dependency' is erroneous and prayed for reduction of the compensation.



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4. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Smt.Manjuri Bera vs. Oriental Insurance Company Ltd and another reported in 2007 (1) TN MAC 385 (SC)*** and an unreported the case in ***New India Assurance Company Ltd. vs. Anand pal and others in SLP (Civil) No.7805 of 2022, dated 04.12.2023.***

5. The learned counsel for the claimant/first respondent, per contra, submitted that she is the younger sister of the deceased and the parents died, when the children were infants; and that the claimant was brought up by the other family members and by the deceased and therefore, the claimant had established that she was a dependant on the deceased.

6. The learned counsel also relied upon the judgment of the Hon'ble Division Bench of this Court in the case of ***Branch Manager, ICICI Lombard General Insurance Company vs. Kaliyamoorthy and others reported in 2016 (2) TAC 284.***

7. Notice to the respondents 2 and 3 is dispensed with *vide* order of this Court, dated 18.10.2024.



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8. The only point for consideration in the instant appeal is '*whether the quantum of compensation awarded by the Tribunal is just and reasonable?*'

9. Admittedly, the claimant is the younger sister of the deceased. She is married and living separately. However, the question is whether she had suffered loss of dependency. The right to file the claim petition is not in question. The only ground raised by the appellant is that since she had not suffered loss of dependency, the compensation under the head 'loss of dependency' has to be set aside. The law in this regard is well settled. A legal representative is different from a dependent. The Hon'ble Supreme Court has held in the cases **Manjuri Bera's** case (cited supra) and **Anand Pal's** case (cited supra) that the brother or sister can maintain a claim petition, though the loss of dependency will depend upon the facts and circumstance of each case. In those cases, since the claimants were elder siblings of the deceased, the Hon'ble Supreme Court had held that there was no loss of dependency. However, in the peculiar facts and circumstances of this case, it is seen that the children, namely the deceased and the claimant, lost their parents at an early age and the deceased was a bachelor at the time of accident. Therefore, though the



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younger married sister was living separately, her dependency on the deceased cannot be totally ruled out. But at the same time, as held by the Hon'ble Supreme Court in the cases cited supra, the dependency will depend upon the facts and circumstances of each case.

10. The ordinary method of computation may not be appropriate to determine the loss of dependency. The claimant had established that the deceased was running a hotel. Hence, the notional income fixed by the Tribunal at Rs.15,166/- p.m at the time of accident, that took place in the year 2020, cannot be faulted. The award under the head 'loss of estate', 'loss of love and affection' and 'funeral expenses' is modified as Rs.16,500/-, Rs.44,000/- and Rs.16,500/- respectively, as they have to be enhanced by 10% every three years.

11. As regards the dependency, this Court is of the view that since the deceased was a bachelor and the dependent claimant was married, the personal expenses of the deceased can be fixed at 65%. The Tribunal had, however, not considered the future prospects. Since the deceased was aged 23 years at the time of accident, 40% has to be added towards future prospects and the multiplier applicable is '18'. Therefore, the award under



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the 'loss of dependency' has to be Rs.15,166/- + Rs.6,066/- (40%) x 12 x 18 x 35% (65% towards future prospects) = Rs.16,05,139/-. The award towards medical bills is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Medical bills	Rs. 93,428/-	Rs. 93,428/-	Confirmed
2	Dependency compensation	Rs.16,37,928/-	Rs.16,05,139/-	Reduced
3	Loss of estate	Rs. 18,000/-	Rs. 16,500/-	Reduced
4	Loss of love and affection	Rs. 48,000/-	Rs. 44,000/-	Reduced
5	Funeral expenses	Rs. 18,000/-	Rs. 16,500/-	Reduced
Total		Rs.18,15,356/-	Rs.17,75,567/-	Reduced by Rs.39,789/-

12. The appellant/Insurance Company is directed to pay the modified compensation of **Rs.17,75,567/-** (Rupees Seventeen Lakhs Seventy Five Thousand Five Hundred and Fifty Seven only) together with interest at 7.5% p.a., from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this order.



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13. On such deposit, the first respondent/claimant is permitted to withdraw the award amount with interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

14. In the result, this Civil Miscellaneous Appeal is partly allowed.
No costs. Consequently, connected miscellaneous petition is closed.

23.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. The Motor Accidents Claims Tribunal, Chief Judicial Magistrate,
Sivagangai.

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



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SUNDER MOHAN, J.

apd

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