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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos.1045 & 1157 of 2021

and

C.M.P(MD)No.9904 of 2021

C.M.A(MD)No.1045 of 2021

The New India Assurance Company Limited,
Through its Branch Manager,
No.584, Virudhunagar Road,
Thiruthangal.

... Appellant

Vs.

1. Krishnaveni
2. Minor.Sakthimathesh
3. Minor.Mathumitha suji
4. Vijaylakshmi
5. Geetha
6. The New India Assurance Company Limited,
Through its Branch Manager,
Nehru Street,
Tindivanam 604 001.

7. Karikolrajan

... Respondents

*[Minors R2 & R3 are represented through their mother and next guardian, the 1st respondent herein]
[R5 set exparte in Tribunal & R6 is not a necessary party for adjudication :
Notice dispensed with]*



PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.82 of 2018 on the file of the Motor Accident Claims Tribunal [I Additional District Court], Tirunelveli, dated 27.01.2021.

For Appellant : Mr.J.S.Murali
For R-1 to R-4 : Mr.T.Selvakumaran
For R-5 & R-6 : Exparte

C.M.A(MD)No.1157 of 2021

1. Krishnaveni
2. Minor.Sakthimathesh
3. Minor.Mathumitha Suji
4. Vijaylakshmi

...Appellants

[Minors R2 & R3 are represented through their mother and next guardian, the 1st Appellant herein]

Vs.

1. Geetha
2. The New India Assurance Company Limited,
Through its Branch Manager,
Nehru Street,
Tindivanam 604 001.
3. Karikolrajan
4. The New India Assurance Company Limited,
Through its Branch Manager,
No.584, Virudhunagar Road,
Thiruthangal,
Virudhunagar District.

...Respondents



PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.82 of 2018 on the file of the Motor Accident Claims Tribunal [I Additional District Court], Tirunelveli, dated 27.01.2021.

For Appellants : Mr.T.Selvakumaran
For R-2 & R-4 : Mr.J.S.Murali
For R-1 : No appearance
For R-3 : Exparte

COMMON JUDGEMENT

C.M.A(MD)No.1045 of 2021 is filed by the Insurance Company and C.M.A(MD)No.1157 of 2021 is filed by the claimants against the award passed in M.C.O.P.No.82 of 2018 on the file of the Motor Accident Claims Tribunal/I Additional District Court, Tirunelveli, dated 27.01.2021.

2. The contention of the Insurance company is that the Driver of the vehicle is the tortfeasor, wherein the Driver Madasamy has hit the stationed vehicle, then the Insurance Company is not liable to pay the compensation. If not, atleast contributory negligence ought to be fixed on the driver. However, the contention of the claimants is that there was no indication the vehicle was stationed on the middle of the road. Therefore, contributory negligence cannot be fixed on the tortfeasor.



3. The fact remains if the vehicle is stationed then the driver of the stationed vehicle ought to have given indication. There is no difference whether it is stationed on the middle of the road or side of the road. Moreover, the accident occurred early morning at 01.30. a.m. Therefore, the contention of the Insurance company ought to be accepted. If any tortfeasor had committed the accident, then 50% contributory negligence ought to be fixed. Since the accident had occurred at 1.30 a.m. on the wee hours, then 40% contributory negligence shall be fixed on the Tortfeasor. Therefore, this Court is fixing 40% contributory negligence on the Driver. The Insurance Company is liable to pay 60% of the total compensation granted by the Tribunal.

4. As far as the appeal filed for enhancement by the claimants is concerned, the claimants have submitted that the Tribunal has fixed Rs.10,000/- as notional income. As per Syed Sadiq case the notional income of Rs.6,500/- shall be fixed for any accident occurred in the year 2008. In the present case the accident occurred in the year 2018, hence the appropriate fixation ought to be Rs.12,000/-. Therefore, the salary of the deceased is increased as Rs.12,000/- per month.



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Monthly income is	Rs.12,000/-
ADD 40% for future prospectus [Rs.12,000+4,800]	Rs.16,800/-
DEDUCT 1/3 personal expenses [Rs.16,800 – 5600]	Rs.11,200/-
Total Annual income is	Rs.11,200 x 12 Rs.1,34,400/-
Multiplier 16 to be applied	Rs.1,34,400 x 16 Rs.21,50,400/-

5. Accordingly, the claimants are entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For Loss of income	Rs.17,91,936/-	Rs.21,50,400/-	Enhanced
2.	For Loss of Consortium	Rs.1,20,000/-	Rs.1,20,000/-	confirmed
3.	For Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
4.	For Transport Expenses	Rs. 5,000/-	Rs. 5,000/-	confirmed
Total		Rs.19,31,936/-	Rs.22,90,400/-	

From the compensation of **Rs.19,31,936/-** granted by the Tribunal, this Court is enhancing a sum of **Rs.22,90,400/-**, as compensation. Since this Court is fixing 40% contributory negligence on the deceased driver, the Insurance Company is liable to pay 60% of the total compensation i.e., **Rs.13,74,240/-**.



6. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

The claimants are entitled to a sum of **Rs.13,74,240/-** as compensation with interest at 7.5% p.a., from the date of claim petition till the date of realization along with costs. The Insurance Company is directed to deposit the same, less the amount already deposited, if any, within a period of Eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimants are entitled their share, as apportioned by the Tribunal. The 1st claimant is permitted to withdraw her share as per Law and the share of the minor claimants shall be deposited in anyone of the Nationalized bank till they attains majority. The interest accrued on the share of the minor claimants shall be paid to the 1st claimant, once in three months. The 1st claimant is directed to pay the balance Court fee, if any.

7. With these modifications, this Civil Miscellaneous Appeals are partly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

08.02.2024

[1/2]

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

1. The Motor Accident Claims Tribunal/
[I Additional District Court],
Tirunelveli.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Common Judgment made in
C.M.A(MD)Nos.1045 &
1157 of 2021
[2/2]**

08.02.2024