



C.M.A(MD)No.643 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.643 of 2018

and

C.M.P(MD)No.7484 of 2018

M/s.Royal Sundaram General Insurance Company Limited,
45 and 46, Whites Road,
Sundaram Towers,
Chennai-14,
Represented by its Divisional Manager. ... Appellant/2nd Respondent

Vs.

1.V.Durgadevi

2.Ranjana Devi (Minor)
Represented by her mother and
guardian V.Durgadevi.

3.K.Kanagaraj

4.K.Andiammal ... Respondents 1 to 4/Claimants

5.Dinakaran Aiyyalusamy ... 5th Respondent/1st Respondent

*(Cause title accepted vide Court order,
dated 18.07.2018 made in
C.M.P(MD)No.6231 of 2018 in
C.M.A(MD)SR.No.20537 of 2018)*



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the fair and decreetal order, dated 06.03.2018 made in M.C.O.P.No.49 of 2015 on the file of the Motor Vehicles Accident Claims Tribunal Additional District Judge (Fast Track) Theni and allow this appeal.

For Appellant : Mr.M.Jerin Mathew

For Respondents : No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the liability and quantum fixed in M.C.O.P.No.49 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District Judge (Fast Track), Theni.

2. According to the claimants, the deceased was riding a two-wheeler from North to South direction. The car owned by the first respondent and insured with the second respondent came from East to West direction. In a junction, the car was driven in a rash and negligent manner and dashed against the two-wheeler. Therefore, the rider of the two-wheeler sustained grievous injuries and later passed away. The claimants have further contended that, the deceased was a heavy vehicle



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driver and earning a sum of Rs.20,000/- per month.

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3. The Insurance Company of the car has filed a counter categorically contending that, the two-wheeler had suddenly crossed the East to West road from North to South direction without properly noticing the movement of the first respondent car at the time of the accident. Even though the driver of the first respondent car had applied the brake, the deceased had fell into the car. Therefore, the entire accident has taken place only due to the negligence on the part of the rider of the two-wheeler and therefore, they are not liable to pay any compensation.

4. The Tribunal after considering the ocular evidence of P.W.2 has arrived at a specific finding that, the accident has taken place only due to the rash and negligent driving on the part of the driver of the car. It also found fault with the Insurance Company for not producing the Motor Vehicle Inspector's report of both the vehicles. The Tribunal has fixed the notional monthly income at Rs.10,000/-. The Tribunal has added 50% towards future prospects and has deducted 1/4th towards personal expenses and applied a multiplier of 17 and awarded a sum of



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Rs.22,95,000/- under the head of loss of income. The Tribunal has further awarded a sum of Rs.2,00,000/- towards loss of love and affection and another sum of Rs.1,00,000/- to the first claimant towards loss of consortium. Challenging the fixation of negligence on the part of the driver of the car and also the quantum, the present appeal has been filed.

5. According to the learned Counsel appearing for the appellant, the rider of the two-wheeler was coming from North to South direction, should have been careful while navigating a junction. Though the driver of the car has taken all precautions by applying brake, the rider of the two-wheeler had fallen into the car and he had succumbed to the injuries. He had further contended that, the Tribunal was not right in fixing 50% towards future prospects when the deceased was self-employed. He further pointed out that, a sum of Rs.2,00,000/- cannot be awarded for four claimants at the rate of 50,000/- under the head of loss of love and affection. He prayed for setting aside the award of Rs.1,00,000/- under the head of loss of consortium. Hence, he prayed for exonerating the Insurance Company.



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6. Though the claimants have been served and their names are printed in the cause-list, they have not chosen to appear either in person or through Counsel. Therefore, this Court is constrained to decide the appeal on merits on the basis of submissions made by the learned Counsel appearing for the appellant and based upon the records.

7. The primary contention of the learned Counsel appearing for the appellant is that, the two-wheeler had dashed against the left side door of the car and therefore, the entire negligence is on the part of the rider of the two-wheeler. As rightly pointed out by the Tribunal, the Insurance Company has not chosen to file the Motor Vehicle Inspector's report, so as to establish that, the two-wheeler had dashed against the left side door of the car. In such circumstances, I do not find any illegality in the order of the Tribunal in fixing the 100% liability upon the driver of the car in the accident.

8. As rightly contended by the learned Counsel appearing for the appellant, the Tribunal was not right in adding 50% to the monthly income towards future prospects and this Court reduces it to 40%. Therefore, the notional monthly income of the deceased person could be



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fixed at Rs.14,000/-.

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9. After deducting 1/4th towards personal expenses, the monthly income would be arrived at Rs.10,500/-. Therefore, the total compensation under the head of loss of income would be Rs.21,42,000/-.

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

S.No.	Heads	Compensation
01.	Loss of income 10,500 X 12 X 17	Rs.21,42,000/-
02.	Loss of love and affection 40,000 X 4	Rs.1,60,000/-
03.	Transport Charges	Rs.5000/-
04.	Funeral Expenses	Rs.25,000/-
05.	Medical Expenses	Rs.3,95,043/-
06.	Loss of Estate	Rs.5,000/-
	Total	Rs.27,32,043/-

11. In view of the above said deliberations, the award of the Tribunal is reduced from Rs.30,25,043/- (Rupees Thirty Lakhs Twenty Five Thousand and Forty Three only) to **Rs.27,32,043/- (Rupees Twenty Seven Lakhs Thirty Two Thousand and Forty Three only)**. The award



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amount shall carry 7.5% interest from the date of the claim petition. The excess amount, if any deposited by the Insurance Company shall be refunded along with accrued interest. The claimants 1, 3 and 4 shall be entitled to withdraw their respective share along with accrued interest and cost as per the proposition laid down by the Tribunal. As far as the share of the second claimant is concerned, the same shall be deposited before a Nationalized Bank to be renewed every three years till she attains majority. The first claimant, namely, the mother shall be entitled to withdraw the accrued interest once in three months.

12. The appeal stands partly allowed to the extent as stated above.

There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

08.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

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- 1.The Motor Vehicles Accident Claims Tribunal
Additional District Judge (Fast Track)
Theni.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.643 of 2018

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