



C.M.A.(MD) No.900 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.900 of 2023

and

C.M.P.(MD)No.12512 of 2024

The Branch Manager,
National Insurance Company Limited,
Divisional Office, JK Pilaza,
T.S.No.6322/27, Santhanathapuram 5th street,
Pudukottai.

... Appellant

Vs.

1.Vijayalakshmi,
2.Minor.Raja,
3.Minor.Selvam,
4.Minor.Vijai,
(Minors R2 to R4 are represented through their
mother/next friend- 1st respondent, Vijayalakshmi)

5.Chellammal,
6.Amutha,
7.Koothaiah.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.358 of 2022 dated 10.03.2023 on the file of the Motor Accidents Claims



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Tribunal, Principal District Court, Pudukottai.

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For Appellant : Mr.J.S.Murali
For Respondents :
for R1 to R4 : Mr.P.Ganapathi Subramanian
for R5 : No appearance
for R6 & R7 : Dispensed with

J U D G M E N T

By the consent of both the counsel, the appeal is taken up for final hearing.

2. The appeal had been filed mainly challenging the quantum of compensation awarded by the Tribunal.

3. Since the finding on negligence and the manner of the accident are not in challenge, the facts leading to the filing of the claim petition are unnecessary for disposal of the present appeal.

4. The learned counsel for the appellant submitted that though the licence-Ex.P7 produced on the side of the claimants suggests that the deceased was born on 12.03.1968, the Tribunal had erroneously taken the



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age mentioned in the postmortem certificate as 50 years and awarded the compensation on that basis and that the compensation under the other heads is excessive and hence, prayed for reduction of the compensation.

5. The learned counsel for the respondents 1 to 4/claimants, per contra, submitted that the notional income fixed by the Tribunal is meagre and that the age determined by the Tribunal is in accordance with law and submitted that the Tribunal had not awarded compensation under the head loss of consortium, which is erroneous and prayed for dismissal of the appeal.

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

7. It is seen that the claimant had established before the Tribunal that the deceased was working as a Driver through the evidence of the wife of the deceased-P.W.1. However, no documents have been produced either to prove the avocation or income of the deceased.

8. The Tribunal, after taking into consideration the oral and



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documentary evidence, fixed the notional income at Rs.14,110/-. This Court is of the view that the notional income fixed by the Tribunal, considering the avocation of the deceased, his age and the year of the accident, is justified.

9. As regards the age of the deceased, the Tribunal had fixed the age of the deceased as 50 years based on the postmortem certificate. The appellant had produced the driving licence of the deceased to prove that the deceased was born on 12.03.1968. Thus, the deceased was 54 years at the time of the accident. Hence, the compensation has to be computed on that basis. Thus, the compensation under the head 'loss of income' has to be Rs.14,110/- + Rs.1,411/- (10% for future prospects) x 12 x 11 (Multiplier) x $\frac{3}{4}$ ($\frac{1}{4}$ has to be deducted for personal expenses) = Rs.15,36,579/-.

10. The Tribunal had awarded Rs.40,000/- under the head 'loss of consortium. However, this Court is of the view that the claimants, five in numbers, are each entitled to Rs.40,000/- under the head 'loss of consortium'. Hence, a sum of Rs.2,00,000/- has to be awarded under the head 'loss of consortium'. The compensation awarded by the Tribunal



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under the head 'loss of estate' and 'funeral expenses' is confirmed.

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11. The claimants are entitled to the compensation under the head 'transport expenses' and hence, the same is awarded as Rs.15,000/-. Thus, the award of 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	Loss of Income	Rs.20,63,880/-	Rs. 15,36,579/-	Reduced
2	Loss of estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
4	Loss of consortium	Rs. 40,000/-	Rs. 2,00,000/-	Enhanced
5	Transport expenses	---	Rs. 15,000/-	Granted
Total		Rs.21,73,880/-	Rs.17,81,579/-	Reduced by Rs.3,92,301/-

12. The appellant Insurance Company is directed to deposit the modified compensation amount of Rs.17,81,579/- (Rupees Seventeen Lakhs Eighty One Thousand Five Hundred and Seventy Nine only) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and proportionate costs, after deducting the amount already deposited if any, within a period of four (4) weeks from the date of receipt of copy of this order.



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WEB COPY 13. The claimants/respondents 1 and 5 are permitted to withdraw their shares, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

14. The second respondent was minor when the claim petition was filed in the year 2022. He would have attained majority now. Hence, he is directed to file appropriate application for recording himself as major and withdraw his share.

15. The Tribunal is directed to deposit the share amount of the minor claimants/respondents 3 and 4 herein in any one of the Nationalized Bank in an interest bearing Fixed Deposit, initially for a period of three years, renewable thereafter, till the minors attain majority. The guardian of the minors/first respondent herein, who is their mother, is permitted to withdraw interest from the said deposit, once in three months and utilise the same for the welfare of the minors claimants/respondents 3 and 4 herein.



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16. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, connected miscellaneous petition is closed.

13.09.2024

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

To:

1. The Motor Accidents Claims Tribunal,
Principal District Judge, Pudukottai.

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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