



C.M.A(MD)No.545 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.545 of 2019
and
C.M.P.(MD)No.6436 of 2019

The Branch Manager,
Reliance General Insurance Company Ltd.,
NH.14, Kurikkal Arcade 2nd Floor,
Near Sengampuzha Park,
Edappalli (Post), Ernakulam District,
State of Kerala

...Appellant

Vs.

1.Meenakshi
2.Akshaya
3.Balaji Subramanian
4.Ramanan

...Respondents

(R3 is declared as major and discharged the first respondent from the guardianship in this appeal vide order dated 11.12.2019 in CMP(MD)No. 7021 of 2019.)



C.M.A(MD)No.545 of 2019

WEB COURT

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 15.11.2017 passed in M.C.O.P.No.1258 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Judge), Thanjavur and allow the appeal with costs.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.G.S.Asok Adhithyan

JUDGMENT

[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN, J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal (Special District Judge), Thanjavur in M.C.O.P.No.1258 of 2016, dated 15.11.2017, the Insurance Company has filed the present appeal.



C.M.A(MD)No.545 of 2019

WEB COPY

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.1258 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Judge), Thanjavur. The respondents 1 to 3 herein are the claimants. They filed the claim petition in M.C.O.P.No. 1258 of 2016, claiming a sum of Rs.3,00,00,000/- (Rupees Three Crores only) as compensation for the death of the husband of the first respondent. By the award, dated 15.11.2017, the Tribunal awarded a sum of Rs.69,67,730/- (Rupees Sixty Nine Lakhs and Sixty Seven Thousand and Seven Thirty only) as compensation along with 7.5% interest from the date of filing of the claim petition.

3.Facts of the Case:-

According to the respondents 1 to 3, on 11.09.2016 at about 08.15 hours, when the deceased was proceeding in his two wheeler bearing Reg.No.TN 55 S 6242, the fourth respondent herein drove the car bearing Reg.No.KL 07 CG 4515, coming from the same direction in a rash and negligent manner and dashed against the deceased, due to which, the deceased sustained grievous head injuries and died on spot. The accident

3/14



C.M.A(MD)No.545 of 2019

occurred only due to the rash and negligent driving of the driver of the car. Therefore, the respondents 1 to 3 filed the claim petition, claiming a sum of Rs.3,00,00,000/- (Rupees Three Crores only) as compensation.

4.The fourth respondent filed the counter statement and denied all the averments made in the claim petition and he contended that the accident happened only due to the negligence of the deceased, who turned his two wheeler towards extreme right of the road without showing any signal or indication and he himself invited the accident and hence, he prayed for dismissal of the claim petition.

5.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition. The appellant insurance company contended that the accident occurred due to the negligence of the deceased and hence, he prayed for dismissal of the claim petition.



C.M.A(MD)No.545 of 2019

6.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and 22 documents were marked as Ex.P1 to P22. On the side of the insurance company, neither any witness was examined nor any documents were marked. On the side of the Court, Ex.X1 to Ex.X3 were marked.

7.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the car, which belonged to the fourth respondent herein and directed the appellant Insurance Company, to pay a sum of Rs. 69,67,730/- (Rupees Sixty Nine Lakhs and Sixty Seven Thousand and Seven Thirty only) as compensation along with 7.5% interest from the date of filing of the claim petition under the heads as follows:-



C.M.A(MD)No.545 of 2019

WEB COPY

Sl. No.	Under the Head	Amount in Rupees
1	Monthly Income	Rs. 72,145/-
2	Add: 30% as future prospects	Rs.72145+21643 =Rs. 93,788/-
3	Less:1/3 for personal expenses	Rs.93,788-31,263=Rs. 62,525/-
4	Annual income of the deceased	Rs.62,525 X 12 =Rs. 7,50,300/-
5	Less: 30% for income-tax	Rs.7,50,300-2,25,090 =Rs. 5,25,210/-
6	Loss of income after applying multiplier 13	Rs.5,25,210 X 13 = Rs.68,27,730/-
7	Loss of consortium to the first respondent.	Rs. 40,000/-
8	Funeral expenses	Rs. 15,000/-
9	For loss of Estate	Rs. 15,000/-
10	For Transportation charges	Rs. 10,000/-
11	For loss of love and affection to the second respondent.	Rs. 10,000/-
12	For loss of love and affection to the third minor respondent.	Rs.50,000/-
	Total compensation amount	Rs.69,67,730/-



C.M.A(MD)No.545 of 2019

WEB COPY

8. Aggrieved against the said award dated 15.11.2017, the appellant Insurance Company has filed the present appeal.

9. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant insurance company disputes the monthly income of the deceased and also disputes the loss of future prospects.

10. Submission of the learned counsel for the Respondents:

Per contra, the learned counsel appearing for the respondents 1 to 3 submits that only after considering all the documents, the monthly income of the deceased and the future prospects were fixed and hence, he seeks for dismissal of this appeal.

11. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3 and also perused all the materials available on record.



C.M.A(MD)No.545 of 2019

11. The following point arise for consideration of this appeal:

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11.1. Whether the compensation granted is in accordance with law?

12. Since the appellant insurance company “filed this appeal only relating to the quantum”, this Court does not go into the merits on the negligence and other aspects.

13.Discussion on quantum:

The deceased served as Assistant Professor (Mechanical Engineer), as per the evidence of PW3 and the appointment order of the deceased is marked as Ex.X1, pay slip for the months from June 2016 to September 2016 is marked as Ex.X.2 and Income Tax Form 16 is marked as Ex.X3. The Tribunal, after considering the monthly salary of the deceased fixed the income as Rs.72,145/-. The deceased had permanent job.

13.1.Calculation of the amount:

13.1.1. The deceased Somasundaaram was aged about 48 years at the time of accident. Hence, 30% future prospects should be added in the monthly income and the same is calculated as follows:

8/14



C.M.A(MD)No.545 of 2019

$$(Rs.72145 + 21643) = Rs.93,788/-.$$

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13.1.2. Since there are three dependents, $1/3^{rd}$ is deducted for personal expenses from the monthly income of Rs.93,788/- and the same is calculated as follows:

$$Rs.93,788 - Rs.31,263/-(1/3) = Rs.62,525/-$$

13.1.3. The annual income of the deceased is Rs.62,525/- X 12 = Rs.7,50,300/-. From the above said annual income, 30% of the amount (ie) Rs.2,25,090/- is deducted for income tax and the same is calculated as follows:

$$Rs.7,50,300 - Rs.2,25,090 = Rs.5,25,210/-$$

13.1.4. The annual income of the deceased is Rs.5,25,210/- and applying multiplier 13, the future loss of income is calculated as follows:-

$$Rs.5,25,210/- \times 13 = Rs.68,27,730/-$$

13.1.5. The non pecuniary damages as per the *Pranay Sethi case* is calculated as follows:-



C.M.A(MD)No.545 of 2019

<i>Heads</i>	<i>Amount in Rupees</i>
Loss of consortium to the first respondent.	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
For loss of Estate	Rs. 15,000/-
For Transportation charges	Rs. 10,000/-
For loss of love and affection to the second respondent.	Rs. 10,000/-
For loss of love and affection to the third minor respondent.	Rs. 50,000/-

13.1.6. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference. Hence, this Court concurs with the findings of the Tribunal.

14. Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal under the various heads is enumerated hereunder:-



C.M.A(MD)No.545 of 2019

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11	For loss of love and affection to the second respondent.	Rs. 10,000/-
12	For loss of love and affection to the third minor respondent.	Rs.50,000/-
	Total compensation amount	Rs.69,67,730/-

In view of the above, this Court finds no merit in the contentions of the learned counsel appearing for the appellant insurance company.



C.M.A(MD)No.545 of 2019

15. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal (Special District Judge), Thanjavur in M.C.O.P.No.1258 of 2016, dated 15.11.2017 is hereby confirmed. The appellant Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.) (K.K.R.K.J.)
12.03.2024**

Index:Yes/No
Internet:Yes/No
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C.M.A(MD)No.545 of 2019

To

WEB COPY

- 1.The Motor Accident Claims Tribunal
(Special District Judge),
Thanjavur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.545 of 2019

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and
K.K. RAMAKRISHNAN, J.

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Dated:12.03.2024