



C.M.A.(MD)No.838 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : **05.09.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.838 of 2019
and C.M.P(MD)No.11016 of 2019

The United India Insurance Company Ltd.,
Rep.by its Divisional Manager,
Nagercoil, Kanyakumari District

...Appellant/3rd Respondent

Vs.

1.A.Vimala
2.L.Jeba Jincy
3.L.Jeba Shelma
4.Francis
5.Palmani

...Respondents 1 to 3/Petitioners

...Respondents 4 & 5/Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 20.07.2017 passed in M.C.O.P.No.09 of 2014 on the file of the Motor Accident Claims Tribunal (Sub Court), Padmanabapuram.

For Appellant : Mr.S.Royce Immanuel

For R1 to R3 : Mr.G.Sridharan

For R4 : Mr.C.T.Perumal

For R5 : No appearance



C.M.A.(MD)No.838 of 2019

WEB COPY

JUDGMENT

The instant appeal has been filed challenging the finding on negligence and the quantum of compensation awarded by the Tribunal.

2. The respondents 1 to 3/claimants filed a claim petition stating that while the deceased was riding his motorcycle on 17.07.2013, a lorry insured with the appellant came in a rash and negligent manner in the opposite direction and caused a head-on collision, as a result of which, the deceased sustained fatal injuries.

3. The owner of the lorry/the 5th respondent herein, remained *exparte* before the Tribunal.

4. The appellant filed a counter stating that the accident took place only due to the negligence of the deceased; that the deceased was aged more than 55 years and hence the compensation claimed on the basis of the age of the deceased at 50 years is excessive; and that prayed for dismissal of the claim petition.



C.M.A.(MD)No.838 of 2019

5. Before the Tribunal, the claimants had examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.7. The appellant examined R.W.1 and R.W.2 and marked Ex.R.1.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the negligence of the offending insured vehicle and directed the appellant to pay a total compensation of Rs.13,32,000/-.

7. The learned counsel for the appellant submitted that the deceased had sustained head injuries as revealed from the post-mortem certificate, hence, the Tribunal ought to have fixed contributory negligence on the deceased for not wearing helmet; and that the Tribunal, by erroneously adding 50% towards future prospects and by applying the wrong multiplier, had awarded exorbitant compensation under the head loss of income. He would further submit the compensation awarded under the head loss of consortium and loss of love and affection to the claimants at Rs.1 lakh each, is on higher side.



C.M.A.(MD)No.838 of 2019

8. The learned counsel for the respondents 1 to 3/claimants, per contra, submitted that the award of the Tribunal is just and reasonable, and in the absence of any evidence to show that the deceased did not wear a helmet, contributory negligence cannot be fixed on the deceased, and prayed for dismissal of the appeal.

9. I have given my anxious consideration to the submissions made on either side and carefully perused the materials available on record.

10. The points for consideration in the instant appeal are as follows:

- a) Whether the finding on negligence by the Tribunal is justified; and
- b) Whether the quantum of compensation awarded by the Tribunal is just and reasonable.

11.1 As regards the 1st point, it is seen that the claimants had examined P.W.3, an eyewitness to the occurrence, besides marking Ex.P. 1, the FIR to corroborate his version. The claimants had also marked the rough sketch, Ex.P.2, and observation mahazar, Ex.P.3, prepared by the police during investigation in the criminal case registered against the



C.M.A.(MD)No.838 of 2019

driver of the offending vehicle. The Motor Vehicles Inspector's report and the final report Ex.P.6 filed by the police before the Magistrate corroborate the evidence of P.W.3. In the light of the above, the evidence of R.W.1, who is the driver of the offending vehicle, an interested witness, cannot be accepted. The Tribunal, therefore, was right in holding that the accident took place only due to the rash and negligent driving of the driver of the insured vehicle.

11.2 As regards the submission that the deceased did not wear any helmet, it is seen that there is no evidence on the side of the appellant to establish the said fact. Merely because the deceased died due to head injuries, it cannot be presumed that the deceased did not wear a helmet. The point No.1 is answered accordingly.

12. As regards the quantum of compensation, it is seen that the claimants had established before the Tribunal that the deceased was working as a Tailor. However, no documentary proof has been produced either to prove the avocation or to prove the income of the deceased. In such circumstances, fixation of the notional income by the Tribunal at Rs.6,500/- cannot be faulted.



12.1 However, the Tribunal had erroneously added 50% towards future prospects. The evidence of R.W.2 would show that on enquiry he found out the age of the deceased was '51' at the time of the accident. The claimants had not adduced any evidence to prove the age of the deceased. However, the licence of the deceased reveals that he was born on 22.05.1962, which shows the age of the deceased at '51' at the time of the accident. The Tribunal, therefore, ought to have added 10% toward future prospects and applied the correct multiplier '11'. The dependents are three in number and therefore, 1/3 to be deducted towards personal expenses. Thus, the award of the compensation under the head 'loss of income' has to be $(Rs.6500 + 10\% = 7150 \times 11 \times 12 \times 2/3)$ Rs.6,29,200/-.

12.2 The compensation under the head funeral expenses is confirmed. The compensation under the head 'loss of consortium to the 1st respondent', who is the wife, and under the head 'loss of love and affection to the respondents 2 and 3', who are the children of the deceased, at Rs.1 lakh each is contrary to the guideline issued by the Hon'ble Supreme Court of India. The claimants are only entitled to Rs.40,000/- each under the heads 'loss of consortium' and 'loss of love and affection'. The Tribunal had not awarded any compensation under the



C.M.A.(MD)No.838 of 2019

head 'transport charges' and this Court grants Rs.10,000/- under the said head. The claimants are entitled to compensation under the head of 'loss of estate' at Rs.15,000/- and the same is awarded by this Court. The modified compensation is tabulated herein under:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Loss of income	10,14,000.00	6,29,200.00	Reduced
2.	Funeral expenses	18,000.00	18,000.00	Confirmed
3.	Loss of consortium to the 1 st petitioner	1,00,00.00	40,000.00	Reduced
4.	Loss of love & affection to P2 & P3	2,00,000.00	80,000.00	Reduced
5.	Transport Charges	Nil	10,000.00	Granted
6.	Loss of estate	Nil	15,000.00	Granted
Total :		13,32,000.00	7,92,200.00	Reduced

13. The appellant shall deposit the compensation amount, after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgement. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw the amount, as per the apportionment fixed by the Tribunal. If the appellant has deposited any excess amount, it is open to them to file an application seeking refund of the excess amount before the Tribunal.



C.M.A.(MD)No.838 of 2019

14. In fine, this appeal is partly allowed. No costs. Consequently,

the connected miscellaneous petition is closed.

05.09.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To

1. Motor Accident Claims Tribunal(Sub Court),
Padmanabapuram.

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



WEB COPY



C.M.A.(MD)No.838 of 2019

SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No.838 of 2019
and C.M.P(MD)No.11016
of 2019

05.09.2024