

C.M.A.(MD) No.1020 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :31.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.1020 of 2023
and
C.M.P.(MD)No.14036 of 2023

K.Sivasakthi

... Appellant

vs.

1.Sivagnanavel,
2.Sivagami Sundari,
3.Esakki,
4.Nagaraja,
5.The Managing Director,
Go Digit General Insurance Company Limited,
Thiru.V.K.Nagar, Industrial Estate,
Guindy, Opposite to Jaya TV,
Chennai – 620 029.
6.The Manager,
Go Digit General Insurance Company Limited,
No.75A, Tiruvananthapuram Road,
Palayamkottai – 627 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 13.09.2023 in M.C.O.P.No.760 of 2021, on the file of the Motor Accidents Claims Tribunal/III Additional District Judge, Tirunelveli.



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For appellant : Mr.T.Selvakumran
For Respondents :
for R1 & R2 : Mr.V.Angusamy
for R5 & R6 : Mr.N.Shyllappa Kalyan
for R3 : No appearance
for R4 : Dispensed with

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the award, dated 13.09.2023, made in M.C.O.P.No.760 of 2021 on the file of the Motor Accidents Claims Tribunal/III Additional, District Court, Tirunelveli, for enhancement of compensation and on the issue of apportionment of the compensation among the dependents of the deceased.

2. The case details as set out in the claim petition are given in brief:

(a) On 18.12.2020, at about 11.00 a.m., the deceased minor Kasi Gnanesh was proceeding in his bi-cycle near Batmanagaram near Banyan tree bus stop, proceeding from north to south on



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the road. At that time, the driver of the lorry bearing registration No.TN-92-C-9499, which came at a high speed and in a rash and negligent manner, hit the bicycle, which was driven by the minor and the minor succumbed to injuries on the spot itself. Therefore, the first respondent, who is the present owner of the vehicle and the second respondent, who is the previous owner/insurer of the vehicle, and the Insurer of the said vehicle, third respondent, are liable to pay compensation.

(b) On behalf of the Insurance Companies/the respondents 3 and 4, it has been stated that the accident occurred due to the negligence of the minor. The policy is in force in the name of one Esakki. Another M.C.O.P.No.520 of 2021 is also filed and it is pending with regard to the same accident. The driver of the lorry did not possess a valid driving licence.

(c) At trial, on the petitioners side, four witnesses have been examined and twenty documents have been marked. P.W.1 is the mother of the deceased minor boy. P.W.2 is an



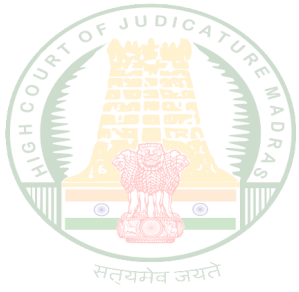
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eyewitness. P.W.3 is the paternal grandmother of the deceased minor boy. P.W.4 is the Village Administrative Officer, Perur Village. On the respondent side, no evidence is let in.

(d) Ex.P3 is the Legal heir certificate issued pursuant to the death of the minor Sivagnanesh by the Tahsildar. Ex.P6 is the Transfer Certificate of the deceased minor boy, wherein, the paternal grandfather Sivagnanavel signed as a guardian of the minor boy and Transfer Certificate has been obtained on 28.12.2020 after the death of the minor boy (died on 18.12.2020). The same Transfer Certificate was marked as Ex.P16 through P.W.3/grandmother of the deceased minor boy. Ex.P11/P20 is a certificate issued by Tahsildar, Srivaikundam to the effect that the paternal grandparents were the guardians of the deceased minor boy. Ex.P17 is the school fees bills issued in the name of Kasignanesh.

(e) Originally, the mother of the deceased minor, Sivasakthi, wife of late Karunanithi had filed M.C.O.P.No.520 of 2021

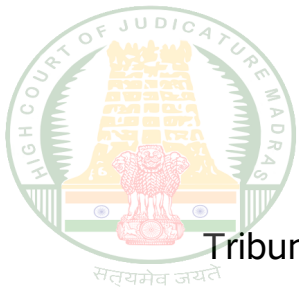


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claiming compensation for the death of her minor son. Then, the paternal grandparents of the deceased minor boy had filed yet another M.C.O.P.No.760 of 2021, wherein the mother of the minor boy was arrayed as fifth respondent. Therefore, both the M.C.O.Ps were clubbed together and common evidence has been recorded and common order has been passed, wherein, M.C.O.P.No.520 of 2021 filed by the mother without impleading the grandparents has been dismissed and M.C.O.P.No.760 of 2021 has been partly allowed, holding that the Insurance Company is liable to pay compensation to the first and second petitioners/grandparents of the minor boy and also to the fifth respondent/the mother of the deceased minor boy and apportioned the compensation of Rs.2,00,000/- each to the grandparents and an amount of Rs.2,65,000/- to the fifth respondent/mother of the deceased minor. Against the said apportionment and for enhancement of the compensation, the mother of the deceased boy has preferred this appeal.

3. The learned counsel for the appellant would submit that the



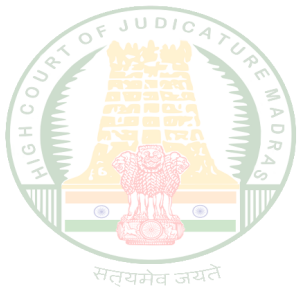
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Tribunal has granted an amount of Rs.2,65,000/- out of Rs. 6,65,000/- to the appellant, who is the mother of the minor and granted compensation for a sum of Rs.2,00,000/- each to the grandparents of the deceased minor boy is incorrect. It is his further argument that the monthly income fixed by the Tribunal is on the lower side.

4. On the side of paternal grandparents of the deceased, it is contended that in the year 2019 itself, the mother of the deceased moved to Tuticorin and the grandparents were only taking care of the deceased minor boy. To this effect, the above said Revenue reports have been filed and the Village Administrative Officer, Perur Village has been examined as P.W.4. In this regard during the cross-examination of P.W.1/mother of the deceased minor, she has stated that her minor son was in the care and custody of her parents. Relying upon the oral evidence of P.W.4 coupled with Exs.P11, P19, P6/P16, P11/P20, the Tribunal has apportioned the compensation as detailed below:

S.No.	Claimants	Award amount
1.	Sivagnanavel (Petitioner No.1)	Rs.2,00,000/-



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2.	Sivagamasundari (Petitioner No.2)	Rs.2,00,000/-
3.	Sivasakthi (Respondent No.5)	Rs.2,65,000/-

5. It is relevant to refer to the observations made by the Hon'ble Apex Court in the matters of minor death due to road accidents. In ***Meena Devi vs. Nanu Chand Mahto @ Namachand Mahto and others (SLP (Civil) No.5345 of 2019, decided on 13.10.2022)***, the date of accident is 29.07.2003. For a 12 year old child, the Tribunal granted a lump sum of Rs.1,50,000/- and the High Court enhanced it to Rs.2,00,000/-. Further, the Hon'ble Apex Court determined the total compensation as Rs.5,00,000/-.

6. In ***Kishan Gopal and another vs. Lala and others reported in 2014 (1) SCC 244***, the child, aged about 10 years old, died in road accident that took place on 19.07.1992, wherein the Hon'ble Supreme Court made reference to the second schedule of Motor Vehicles Act, 1988 and accepted the notional income of Rs. 30,000/- in place of Rs.15,000/-, by applying the analogy that the value of rupees has come down drastically since 1994. Accepting



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the notional income at Rs.30,000/-, as per the age of the parents, that is, 36 years, the loss of dependency was calculated by applying the multiplier of 15 and fixed the loss of dependency at Rs.4,50,000/- and a sum of Rs.50,000/- was awarded under conventional heads and awarded a total compensation of Rs. 5,00,000/- lakhs to the claimants.

7. Whereas, in ***Kurvan Ansari @ Kuruvan Ali and another vs. Shyam Kishore Murmu and another reported in 2014 (1) SCC 317***, the child aged about 7 years, died in an accident that took place on 06.09.2004. The Hon'ble Apex Court by taking notional income of Rs.25,000/-, applying the multiplier of '15', calculated the loss of dependency as Rs.3,75,000/- and a sum of Rs.95,000/- was awarded under conventional heads and the total compensation awarded was Rs.4,70,000/-.

8. The evidence of P.W.1, during her cross-examination to the effect that her son was under care and custody of her parents, would show that the minor boy was not in the custody of the mother. The evidence of P.W.4/Village Administrative Officer, Perur



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Village and even the connected Revenue records would explicate that the minor boy was under the care and custody of the paternal grandparents. Therefore, the Tribunal has granted compensation as mentioned supra. In the given circumstances, I do not find any valid reason to disturb the said apportionment.

9. It is evidence of P.W.1 that at the time of death of her son, he was aged about 12 years and he was hale and healthy and had he been alive, he would have studied well and he would have taken care of her. Even P.W.3 would state the same details. It cannot be denied that the death of the minor boy is a great loss to the mother as well as to the paternal grandparents. The Tribunal has fixed the income of the minor at Rs.5,000/- and by adding 40% towards future prospects fixed his income at Rs.7,000/-. For the personal and living expenses 50% was deducted and by applying multiplier '15', loss of dependency was calculated at Rs.6,30,000/- (Rs. 7,000/- - 50% x 12 x 15).

10. This Court does not find any perversity or infirmity in the findings of the Tribunal.



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11. Based on the above discussions and observations, this Civil

Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

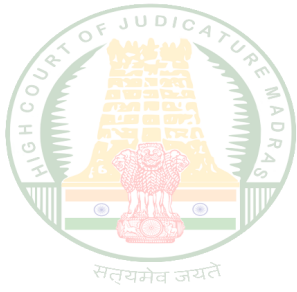
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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

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

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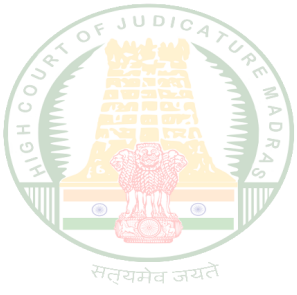
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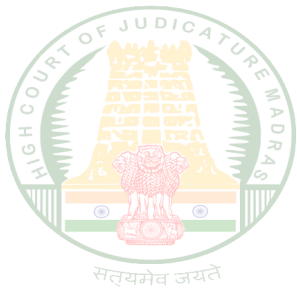
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(g) On behalf of the Insurance Companies/the respondents 3 and 4, it has been stated that the accident occurred due to the negligence of the minor. The policy is in force in the name of one Esakki. Another M.C.O.P.No.520 of 2021 is also filed and it is pending with regard to the same accident. The driver of the lorry did not possess a valid driving licence.

(h)At trial, on the petitioners side, four witnesses have been examined and twenty documents have been marked. P.W.1 is the mother of the deceased minor boy. P.W.2 is an eyewitness. P.W.3 is the paternal grandmother of the deceased minor boy. P.W.4 is the Village Administrative



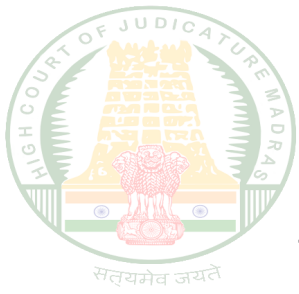
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Officer, Perur Village. On the respondent side, no evidence is

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(i) Ex.P3 is the Legal heir certificate issued pursuant to the death of the minor Sivagnanesh by the Tahsildar. Ex.P6 is the Transfer Certificate of the deceased minor boy, wherein, the paternal grandfather Sivagnanavel signed as a guardian of the minor boy and Transfer Certificate has been obtained on 28.12.2020 after the death of the minor boy (died on 18.12.2020). The same Transfer Certificate was marked as Ex.P16 through P.W.3/grandmother of the deceased minor boy. Ex.P11/P20 is a certificate issued by Tahsildar, Srivaikundam to the effect that the paternal grandparents were the guardians of the deceased minor boy. Ex.P17 is the school fees bills issued in the name of Kasignanesh.

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3. The learned counsel for the appellant would submit that the Tribunal has granted an amount of Rs.2,65,000/- out of Rs. 6,65,000/- to the appellant, who is the mother of the minor and

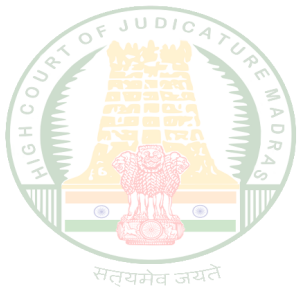


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granted compensation for a sum of Rs.2,00,000/- each to the grandparents of the deceased minor boy is incorrect. It is his further argument that the monthly income fixed by the Tribunal is on the lower side.

4. On the side of paternal grandparents of the deceased, it is contended that in the year 2019 itself, the mother of the deceased moved to Tuticorin and the grandparents were only taking care of the deceased minor boy. To this effect, the above said Revenue reports have been filed and the Village Administrative Officer, Perur Village has been examined as P.W.4. In this regard during the cross-examination of P.W.1/mother of the deceased minor, she has stated that her minor son was in the care and custody of her parents. Relying upon the oral evidence of P.W.4 coupled with Exs.P11, P19, P6/P16, P11/P20, the Tribunal has apportioned the compensation as detailed below:

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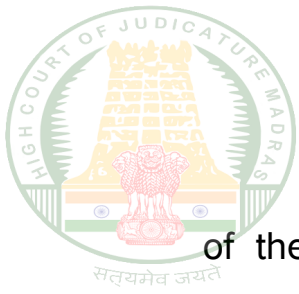


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3.	Sivasakthi (Respondent No.5)	Rs.2,65,000/-
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8. The evidence of P.W.1, during her cross-examination to the effect that her son was under care and custody of her parents, would show that the minor boy was not in the custody of the mother. The evidence of P.W.4/Village Administrative Officer, Perur Village and even the connected Revenue records would explicate



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9. It is evidence of P.W.1 that at the time of death of her son, he was aged about 12 years and he was hale and healthy and had he been alive, he would have studied well and he would have taken care of her. Even P.W.3 would state the same details. It cannot be denied that the death of the minor boy is a great loss to the mother as well as to the paternal grandparents. The Tribunal has fixed the income of the minor at Rs.5,000/- and by adding 40% towards future prospects fixed his income at Rs.7,000/-. For the personal and living expenses 50% was deducted and by applying multiplier '15', loss of dependency was calculated at Rs.6,30,000/- (Rs. 7,000/- - 50% x 12 x 15).

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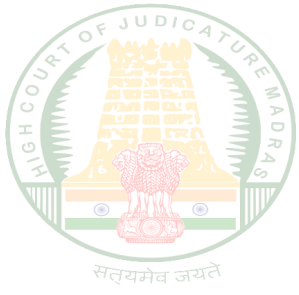
To

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