



C.M.A.(MD)No.478 of 2024

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Dated: 12.08.2024

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

C.M.A.(MD)No.478 of 2024
and CMP(MD) No.6395 of 2024

United India Insurance Company Ltd.,
Divisional Office
Through its Divisional Manager
Door No.7A, West Veli Street,
Madurai Town,
Madurai District

..Appellant/2nd Respondent

Vs.

1. Kaliswari

2. Minor. Durga Devi

3. Minor. Kavinesh

(Minors 2 and 3 are represented by their mother
and natural guardian 1st respondent Kaliswari)

4.Vishwanathan

(Set exparte in Tribunal Notice dispensed with)

..Respondents 1 to 3/Petitioners

.. 4th Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award passed in MCOP No.84 of 2016 dated 04.08.2022 on the file of the Motor Accident Claims Tribunal, Additional District Court, Paramakudi.

For Appellant : Mr.J.S.Muruali

For R1 to R3 : Mr.D.Senthil.

JUDGMENT

The instant appeal has been preferred by the appellant/ Insurance Company challenging the findings on negligence and the quantum of compensation.



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2. The respondents 1 to 3 filed a claim petition stating that on 17.04.2016, while the deceased was riding his two wheeler from west – east on the Paramakudi to Nainarkovil Road, the driver of the offending vehicle insured with the appellant came in the opposite direction in a rash and negligent manner and dashed against the vehicle, as a result of which, the deceased sustained fatal injuries.

3. The fourth respondent remained *exparte* before the Tribunal.

4. The appellant filed counter stating that the accident did not take place due to the negligence of the driver ; that the deceased did not have valid licence; hence, they are not liable to pay compensation; and that in any case the compensation claimed was excessive.

5. The claimants examined P.W.1 to P.W.3 and marked documents Exs.P.1 to P.12. The appellant/insurance company examined R.W.1 and did not mark any document.



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6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the negligence of the driver of the vehicle insured with the appellant and determined the compensation at Rs. 24,48,360/-.

7. The learned counsel appearing for the appellant would contend that though the Tribunal had found that the deceased did not have valid driving licence, erroneously fixed only 10% contributory negligence and submitted that the contributory negligence should be increased to 25%; that the claimants had not produced any documents either to prove the avocation, or income; and that the notional income adopted by the Tribunal is excessive and prayed for reduction of compensation amount.

8. The learned counsel appearing for the respondents/ claimants per contra submitted that even assuming that the deceased did not have valid licence, the manner of accident suggests that the entire fault is on the owner of the offending vehicle insured with the appellant and submitted that the quantum of compensation awarded by the Tribunal is just and reasonable and no interference is called for.



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9. This Court has carefully considered the rival submissions.

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

“a) Whether the Tribunal was right in fixing 10% contributory negligence on the deceased for not possessing driving licence? and

b) Whether the amount awarded by the Tribunal is just and reasonable?”

11. As regards the first point, it is submitted that the appellant had established the fact that the deceased did not possess valid licence. The respondents have not challenged the said finding. P.W.1, wife of the deceased also could not produce any document and had admitted the same in her cross examination. Under such circumstances, the finding of the Tribunal that the deceased did not have valid licence is in accordance with law. However, the manner of accident as stated in the claim petition and the evidence of P.W.2 would show that the driver of the insured vehicle came on the extreme right side of the road in violation of the Rules and had caused the accident. The plan/Ex.P.3 which was prepared by the police during investigation corroborates the said version of P.W.2. Therefore, the fact that the driver of the insured vehicle was the



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cause for the accident is established. However, considering the fact that the deceased did not have valid licence in the facts the case, this Court finds that the contributory negligence fixed on the deceased at 10% is just and reasonable. Thus, the point (a) is answered.

12. As regards the quantum of compensation, it is seen that the claimants had marked Ex.P.8 to show that the deceased was a tenant under P.W.2 who was paying monthly rent of Rs.3000/- for running a mechanic shop. However, there is no proof of income. Hence, the Tribunal had taken the notional income at Rs.12,000/-. Since the accident took place in the year 2016, this Court is of the view that the Tribunal was right in fixing notional income at Rs.12,000/-. The Tribunal had calculated future prospectus at 40% with the correct multiplier. However, since the deceased had three dependents, the Tribunal ought to have deducted 1/3rd towards personal expenses instead of 1/4th.

13. Accordingly, the monthly income of the deceased would come to Rs.16,800/- [Rs.12,000/- + Rs.4,800/- = Rs.16,800/-] and after deducting 1/3rd towards personal expenses, the monthly loss of dependency would come to Rs.11,200/- [Rs.16,800/- - Rs.5,600/-] and



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thus, the compensation under the head loss of dependency comes to Rs.22,84,800/- [Rs.11,200/- X 12 X 17]. Hence, the award under the head of loss of dependency has to be fixed as Rs.22,84,800/-. The compensation under other heads is in accordance with law and the same is confirmed.

14. Thus, the compensation awarded by the Tribunal is reduced to Rs.24,34,800/-

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Loss of dependency	25,70,400/-	22,84,800	Reduced
2	Loss of consortium	40,000/-	40,000/-	Confirmed
3	Loss of Love and Affection	80,000/-	80,000/-	Confirmed
4	Funeral Expenses	15,000/-	15,000/-	Confirmed
5	Loss of Estate	15,000/-	15,000/-	Confirmed
	TOTAL	27,20,400/-	24,34,800/-	Reduced

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is reduced from Rs. 25,70,400/- to Rs.24,34,800/-. The appellant is directed to deposit the entire award amount, less the amount already deposited, if any,



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within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first respondent is permitted to withdraw her share as apportioned by the Tribunal. The respective shares of the minor respondents 2 and 3 are directed to be deposited in a Nationalised Bank for a period of three years, renewable thereafter, till they attain majority. The first respondent/mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. No costs. Consequently connected miscellaneous is closed

12.08.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal/
Additional District Court, Paramakudi
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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