



C.M.A(MD)No.61 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.61 of 2023

1.K.Ramakrishnan

2.R.Savitha

... Appellants

Vs.

1.S.Kaja Mydeen

2.M.Balan

3.The New India Assurance Company Limited,
Branch Office,
D.No.913, Catholic Centre Main Road,
Kovilpatti.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the the impugned order made in M.C.O.P.No.1751 of 2018 dated 06.09.2022 on the file of the Motor Accident Claims Tribunal cum Special District Court, Madurai.

For Appellants

For R1

For R2

For R3

: Mr.R.Aravindan

: Mr.A.Mohamed Haneef

: No appearance

: Mr.S.Sarvagan Prabhu



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JUDGMENT

The claimants have preferred this Civil Miscellaneous Appeal for enhancement.

2.It is a case of fatal. The deceased was 1 ½ years old child. The contention of the claimants is that the Tribunal has fixed the contributory negligence to the tune of 50% on the part of the father who was driving the two-wheeler. The Tribunal has considered the fact that while crossing the National Highway Road, the two-wheeler has turned to cross the National Highway and the offending four-wheeler which was coming in the National Highway has not stopped because of the high speed. By considering the negligence of both parties, the Tribunal has fixed negligence 50% each. The contention of the appellant is that the four-wheeler ought to have slow down after seeing the two-wheeler. This Court is not accepting such contention since the high speed is permitted in National Highway and hence the two-wheeler ought to have been careful. Having held so, this Court is of the considered opinion that 50% negligence on each is erroneous. Therefore, this Court is inclined to modify the percentage of negligence as 60% on the part of the four-wheeler and 40% on the part of the two-



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wheeler as contributory negligence.

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3.As far as loss of parental consortium is concerned, the Tribunal has fixed Rs.80,000/-. This Court is adding Rs.20,000/- to the same and enhancing it from Rs.80,000/- to Rs.1,00,000/-. The learned Counsel for the claimants submitted that the mother cannot be having any contributory negligence on this, therefore, it has to be considered on right spirit but the learned Counsels for the respondents 1 and 3 submitted that the father and mother have filed separate claim petition for their injury which they suffered during the accident. Therefore, considering these facts, this Court is not inclined to entertain this plea. The compensation granted by the Tribunal under other heads are confirmed.

4. The observation made herein is only for calculating the compensation and it will not affect the Criminal Court proceedings. The Criminal Court shall consider the case as per Criminal Law and uninfluenced by any observation made by this Court in the present judgment.

5.The enhanced award amount granted by this Court is as under:



Sl.No.	Head of compensation	Modified award granted by this Court	Award granted by the Tribunal
1.	Loss of Income	Rs.4,32,000/- (confirmed)	Rs.4,32,000/-
2.	Loss of Parental Consortium	Rs.1,00,000/- (enhanced)	Rs.80,000/-
3.	Funeral Expenses	Rs.15,000/-(confirmed)	Rs.15,000/-
4.	Loss of Estate	Rs.15,000/- (confirmed)	Rs.15,000/-
5.	Transport Expenses	Rs.5,000/- (confirmed)	Rs.5,000/-
	Total	Rs.5,67,000/-	Rs.5,47,000/-
	Subtracting contributory negligence	- 40% of total	- 50% of total
	Total compensation	Rs.3,40,200/- (enhanced)	Rs.2,73,500/-

Thus, this Court is enhancing the compensation from Rs.2,73,500/- to Rs. 3,40,200/-.

6.The 3rd respondent Insurance Company is directed to deposit Rs. 3,40,200/- (Rupees Three Lakh Forty Thousand and Two Hundred only) with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their equal shares with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. Since this



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Court is enhancing the compensation, the claimants are liable to pay the balance Court fee.

7.With the above said observation, the Civil Miscellaneous Appeal is partly allowed. No costs.

14.03.2024

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

Tmg

To

1.Motor Accident Claims Tribunal cum
Special District Court, Madurai.

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



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S.SRIMATHY, J.

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