



C.M.A.(MD) No.392 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.392 of 2024

and

C.M.P.(MD)No.5319 of 2024

and

Cros.Obj(MD)No.37 of 2024

In C.M.A(MD)No.392 of 2024:

The Branch Manager,
United India Insurance Company Ltd.,
Branch Office, 2nd Floor, Xavier Building,
PWD Office Road, Nagercoil.

... Appellant

Vs.

1.Essakiammal,
2.Minor Makes Priya,
3.Minor S.Palanivel,
(The respondents 2 and 3 are represented by their mother and next friend
Essakiammal/first respondent),
4.Gomathi Ammal,
5.Dr.Joel Roobert Sindhu.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2023 passed in M.C.O.P.No.992 of 2018 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Tirunelveli.



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For Appellant

: Mr.A.S.Mathialagan

For Respondents

for R1 to R4

: Mr.V.Sasikumar

R5

: Dispensed with

In Cros.Obj(MD)No.37 of 2024:

1. Essakiammal,

2. Minor Makesh Priya,

3.Minor S. Palanivel,

(The respondents 2 and 3 are represented by their mother and next friend
Essakiammal/first respondent),

4.Gomathi Ammal.

... Cross objectors

vs.

1. The Branch Manager,

United India Insurance Company Ltd.,

Branch Office, 2nd Floor, Xavier Building,

PWD Office Road, Nagercoil.

2.Dr.Joel Roobert Sindhu.

... Respondents

Prayer: Cross Objection filed under Order XVI Rule 22(1) of Civil Procedure Code against C.M.A.(MD)No.392 of 2024 against the judgment and decree dated 28.02.2023 passed in M.C.O.P.No.992 of 2018 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Tirunelveli for challenging the award for a sum of Rs.14,08,364/- as compensation and to enhance the compensation from Rs.14,08,364/- to Rs.20,08,364/-.

For Cross Objectors : Mr.V.Sasikumar



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C.M.A.(MD) No.392 of 2024

For Respondents

for RI : Mr.A.S.Mathialagan
R2 : Dispensed with

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the finding on negligence and quantum of compensation awarded by the Tribunal. The claimants/respondents 1 to 4 have filed Cross-Objection seeking enhancement of the compensation.

2. The respondents 1 to 4 filed a claim petition stating that when the deceased was riding his Autoricksha on 01.02.2018 and proceeding from north to south on Ambasamudram main road, a car insured with the appellant/Insurance Company came in the opposite direction in a rash and negligent manner and caused a head-on collision, as a result of which the deceased was thrown out and sustained grievous injuries and thereafter, succumbed to the injuries on 07.03.2018.

3. The owner of the vehicle remained *ex parte* before the Tribunal. The appellant/Insurance Company filed a counter stating that the accident did not take place due to the negligence of the driver of the insured



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vehicle and that in any case, there is no nexus between the injury suffered and the death of the deceased. In any case, the compensation claimed is excessive.

4. Before the Tribunal, the first respondent examined herself as P.W.1, and two more witnesses, namely, Pechimuthu and Dr.Sudalaimuthu, were examined as P.W.2 and P.W.3, respectively and marked Exs.P1 to P18. The appellant/Insurance Company marked Exs.R1 to R3 and did not examine any witnesses.

5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the deceased was liable to 20% contributory negligence and directed the appellant/Insurance Company to pay the compensation at Rs.14,08,364/- to the respondents 1 to 4 herein/claimants.

6. The learned counsel for the appellant/Insurance Company submitted that the deceased had already suffered from kidney ailment and that the claimants had not established the nexus between the accident and the death of the deceased; and that the manner of accident would show



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that the deceased was, equally, guilty of contributory negligence; and that the compensation awarded by the Tribunal is excessive.

7. Since the owner of the vehicle/fifth respondent herein remained *ex parte* before the Tribunal, notice to the fifth respondent herein is dispensed with.

8. The learned counsel for the respondents 1 to 4/claimants, per contra, submitted that the award of the Tribunal, holding that there was a nexus between the accident and the death of the deceased, cannot be interfered with; and the Tribunal, however, erroneously fixed the contributory negligence on the deceased without any basis: and that the Tribunal had not awarded any compensation under the head loss of consortium and hence prayed for enhancement.

9. This Court has given its anxious consideration to the submissions made on either side.

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



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'a. Whether the claimants/respondents 1 to 4 had established the nexus between the accident and the death of the deceased?

b. Whether the Tribunal was right in fixing the contributory negligence on the part of the deceased in the accident?

c. Whether the compensation awarded by the Tribunal is just and reasonable?'

11. As regards the first question, admittedly, the claimant had not produced post-mortum certificate to prove the exact cause of death. However, it is seen from the evidence that the deceased was taking treatment from 01.02.2018 to 10.02.2018. The Discharge summary shows that the deceased had suffered from Post traumatic quadriplegia cervical spinal cord injury. Further, the Discharge Summary also records the following history:

*"Alleged RTA. Treated initially @ TVMCH
H/O inability to use both lower limbs
H/O difficulty in using both UL.
H/O decreased sensation below neck.
H/O not able to pass urin & Catheterization
done."*



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12. Though the accident took place on 01.02.2018, the deceased died on 07.03.2018. P.W.I-Wife of the deceased had deposed that the deceased had taken treatment for urithral injury sustained due to the accident from 21.02.2018 to 24.02.2018. There is no evidence to show that the deceased suffered from any previous ailment. Considering the nature of the injuries the suffered by the deceased, the age of the deceased and absence of any evidence to show that the deceased suffered from previous ailment, this Court is of the view that the nexus between the injuries suffered in the accident and the death can be safely inferred. The point No.1 is answered accordingly.

13. As regards the second question, it is seen that the Tribunal had fixed 20% of contributory negligence on the deceased. It is not clear as on what basis the Tribunal had fixed 20% of contributory negligence. The evidence shows that the deceased was proceeding from north to south and the offending vehicle was proceeding from south to north. The accident plan and rough sketch prepared by the Police during the investigation suggest that the accident took place on the eastern side of the road. Further, the appellant/Insurance Company had not examined any evidence on their side to show that the deceased contributed to the accident. In the



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absence of the same, the contributory negligence fixed on the deceased is unwarranted and without any basis. Hence, the same is set aside.

14. As regards the quantum of compensation, this Court finds that the Tribunal had fixed the notional income at Rs.10,000/- p.m., though the claimants had not established the income of the deceased. There cannot be any infirmity in the said finding of the Tribunal.

15. However, this Court finds that even if the Tribunal had not awarded the compensation under the head 'loss of consortium' to the four claimants, who are the wife, children and mother of the deceased, each of them is entitled to Rs.40,000/- towards loss of consortium. Hence the compensation under the head loss of consortium is at Rs.1,60,000/-. The award is modified as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Income	Rs.15,75,000/-	Rs.15,75,000/-	Confirmed
2	Medical expenses	Rs. 1,50,455/-	Rs. 1,50,455/-	Confirmed
3	Loss of estate	Rs. 10,000/-	Rs. 10,000/-	Confirmed
4	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Transportation expenses	Rs. 10,000/-	Rs. 10,000/-	Confirmed
6	Loss of consortium	---	Rs. 1,60,000/-	Granted



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Total	Rs.17,60,455/-	Rs.19,20,455/-	Enhanced by Rs.1,60,000/-
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16. The appellant/Insurance Company shall deposit the enhanced compensation of Rs.19,20,455/- (Rupees Nineteen Lakhs Twenty Thousand Four Hundred and Fifty Five only) with the interest @ 7.5% p.a. from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

17. On such deposit, the respondents 1 and 4/claimants are entitled to withdraw the aforesaid amount together with proportionate interest and costs, less the amount already withdrawn, if any, as per the apportionment made by the Tribunal, by filing an appropriate application before the Tribunal. The respondents 1 to 4/claimants are directed to pay the necessary Court Fee, if any, on the enhanced amount.

18. The Tribunal is directed to deposit the share amount of the minor claimants/respondents 2 and 3 herein in any one of the Nationalized



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Bank in an interest bearing Fixed Deposit, initially for a period of three years, renewable thereafter, till the minors attain majority. The guardian of the minors/first respondent herein, who is their mother, is permitted to withdraw interest from the said deposit, once in three months and utilise the same for the welfare of the minors claimants/respondents 2 and 3 herein.

19. In the result, this Civil Miscellaneous Appeal is dismissed and the Cross Objection is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2024

Index: Yes/No
NCC: Yes/No
Speaking Order/Non-Speaking Order
apd

To:

1.Motor Accidents Claims Tribunal,
III Additional District Court, Tirunelveli

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



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SUNDER MOHAN, J.

apd

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