



CMA(MD)No.780 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.04.2025

CORAM

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A.(MD)No. 780 of 2024

and

C.M.P(MD)No. 8576 of 2024

The New India Assurance Company Limited,
Through its Branch Manager,
Office at. Door No.182/22,
L.S.N. High Road,
Tirunelveli Junction.

.. Appellant

Vs.

1. Tharmar
2. Arulmani
3. T.Manimegala
4. Rajan

.. Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order passed by the Motor Accident Claims Tribunal/Special Sub Court dealing with MCOP Cases, Tirunelveli



CMA(MD)No.780 of 2024

in M.C.O.P. No. 342 of 2017 dated 27.02.2023 as against the appellant and allow the appeal.

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For Appellant : Mr.N. Dilipkumar

For Respondents : M/s.T. Selvakumaran, for R-1 to R-3

JUDGMENT

DR.G.JAYACHANDRAN, J.

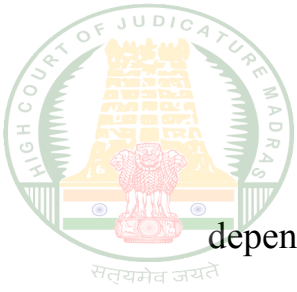
AND

R.POORNIMA, J.

This Civil Miscellaneous appeal is filed to set aside the order passed by the Motor Accident Claims Tribunal/Special Sub Court dealing with MCOP Cases, Tirunelveli in M.C.O.P. No. 342 of 2017 dated 27.02.2023.

2. Heard on either side and perused the material documents placed on records.

3. It is case of accident claim made by parents and unmarried sisters of a Army man, who came to the native on leave, but unfortunately died in the motor accident. The claim for Rs.1,25,00,000/-was made by the



CMA(MD)No.780 of 2024

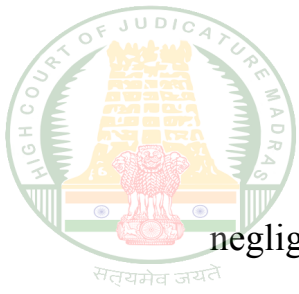
dependents before the Motor Accident Claims Tribunal. Totally, there are three witnesses examined and 11 exhibits marked to substantiate their claim against the offending four wheeler TATA Indica bearing Registration No.TN-07-AU-9547. The Insurance company which resisted the claim marked two exhibits, namely; rough sketch and a copy of the complaint, to prove that the accident occurred due to the negligence of the deceased, who came in his two wheeler on wrong side and had head on collision with TATA Indica four wheeler driven by the first respondent. The Tribunal after considering the income and age of the deceased, the evidence regarding negligence held that the driver of the offending vehicle is solely responsible for the accident due to the rash and negligence driving.

4. Taking into consideration, the salary of the deceased after deducting 50% for the personal expenditure and at the same time adding 50% for the future prospectus and applied multiplier 17 the Tribunal awarded total sum of Rs.58,87,670/- as compensation, with 7.5% interest. For easy understanding the table of compensation is extracted hereunder:



Sl. No.	Heads	Calculation
1.	Salary Income	Rs.37,690/-per month
2.	Future Prospects at 50%	Rs.37690=Rs.18,845/- =Rs.56,535/-
3.	1/2 nd of the income (ii) deducted as personal expenses of the deceased	Rs.56,535-Rs.28,267/- =Rs.28,268/-
4.	Compensation after multiplier of 17 is applied	Rs.28,268 x 12 x 17 = Rs.57,66,677/-
5.	Loss of Consortium to the parents	Rs.88,000/-
6.	Loss of Estate	Rs.16,500/-
7.	Funeral Expenses	Rs.16,500/-
	TOTAL COMEPNSATION AWARDED	Rs.58,87,672/- Rounded off Rs.58,87,670/-

5. The Learned Counsel appearing for the appellant/Insurance company submitted that the rough sketch Ex.R.1 and the evidence of P.W.2 would clearly shows that the deceased was driving vehicle from West to East and dashed against the four wheeler TATA Indica proceeding from East to West. The accident was occurred in the southern side of the highway near Muthu Store and the same affirmed by P.W.2 when he was confronted with Ex.R.1 Rough sketch. While so, when the evidence clearly establish that the accident occurred due to the negligence of the deceased, atleast 50% of the compensation ought to have been deducted towards the contributory

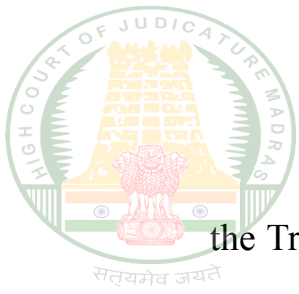


CMA(MD)No.780 of 2024

negligence. He further submitted that loss of income not properly calculated and income tax not deducted.

6. The Learned Counsel appearing for the claimants submitted that the Tribunal has disbelieve the evidence of P.W.2 and gone by the evidence available to show that it was the driver of the four wheeler who has caused the accident due to his sole negligence. Regarding the loss of income he would submit that though the pay slip indicates that the last drawn of the salary of the deceased is more than Rs.40,000/-, the Tribunal has taken only 37,690/-as monthly income.

7. This Court after considering the rival submissions, particularly, Ex.R.1/rough sketch and evidence of P.W.2 finds some force by the Learned counsel appearing for the appellant that the accident was occurred due to the contributory negligence of the deceased. However, considering the other evidences and facts, this Court is not in a position to fix the percentage of the contribution. At the same time, this Court is also aware of the fact that the deceased was employed in Army and his expense for personal care will not be 50% as in normal case. Whereas in this matter,



CMA(MD)No.780 of 2024

the Tribunal had not considered the peculiar fact and erroneously deducted 50% of salary towards the personal expenditure, which is on the higher side.

8. Taking into consideration the said fact, this Court take a conscious decision that there need not be any disturbance to the compensation awarded except pointing out the error in appreciation of evidence by the Tribunal.

9. Accordingly, this Civil Miscellaneous Appeal is disposed off confirming the award passed by the Motor Accident Claims Tribunal/Special Sub Court dealing with MCOP Cases, Tirunelveli in M.C.O.P. No.342 of 2017, dated 27.02.2023. The claimants are entitled to a sum of 58,87,670/- as compensation, with interest at 7.5% p.a., from the date of claim petition till the date of realization along with costs. The Insurance Company is directed to deposit the entire award amount, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimants are permitted to withdraw the same as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing



CMA(MD)No.780 of 2024

appropriate application before the Tribunal, as per Law. No Costs.

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Consequently, connected miscellaneous petition is closed.

[G.J., J.] & [R.P., J.]
04.04.2025

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

To

1. The Motor Accident Claims Tribunal/
Special Sub Court dealing with MCOP Cases,
Tirunelveli.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA(MD)No.780 of 2024

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and

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