



C.M.A(MD)No.355 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

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1.Amutha
2.Kayalvizhi
3.Kaviya
4.Monika(Minor)
(Minor 4th appellant is represented by her
mother and Guardian 1st appellant)
5.Sinthamani

... Appellants/Petitioners

-Vs-

1.Kadharshek
2.The Branch Manager,
Royan Sundaram General Insurance Company Ltd.,
Old No.113 and 114,
New No.18 and 20
No.4B, 4th Floor,
A-Block, Menakampala Arcade
Thiyagarayar Road,
T.Nagar, Chennai,
Chennai.

... Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1998, as against the award and decree dated 11.11.2022 passed in MCOP No.195 of 2021 on the file of the Motor



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Accident Claims Tribunal/Mahila Court, Pudukottai.

For Appellant : Mr.P.Prabakaran
For R2 : Mr.S.Srinivasa Raghavan
For R1 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the legal heirs of the deceased Prem Ananad, against the award dated 11.11.2022 passed in MCOP No.195 of 2021 by the MACT/Mahalia Court, Pudukkottai, on the issue of negligence and on quantum.

2.Despite the receipt of notice, the first respondent neither appeared nor entered appearance through the counsel.

3.Heard the arguments of the learned counsel for the appellants and the learned counsel for the second respondent.

4.The manner in which the accident took place is not in dispute.

5.The learned counsel appearing for the appellants would vehemently argue that the Tribunal fixed 20% contributory negligence upon



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the deceased is incorrect. It is his further argument that the deceased was an Operator in a Private Company besides working as a driver and earning a sum of Rs.40,000/ and Rs.20,000/- per month respectively. But the Tribunal has fixed his monthly income at Rs.13,000/ is very less. Hence, he prays for enhancement of compensation.

6.Upon consideration, the Tribunal fixed the income of the deceased at Rs.13,000/- and by adding future prospects of 25% and by deducting $\frac{1}{4}$ for personal and living expenses, fixed the loss of dependency at Rs.19,0,328/-. For loss of consortium an amount of Rs.40,000/- and for loss of estate and for funeral expenses an amount of Rs.15,000/ each was awarded. A sum of Rs.50,000/- was granted for loss of love and affection in respect of each of the appellants/claimants No.2 to 4 and Rs.50,000/- is awarded towards loss of love affection to the mother of the deceased 5th appellant herein. For ambulance charges, an amount of Rs.10,000/ was awarded and total sum of Rs.17,45,062/- was granted by the Tribunal.

7.As regards the income and avocation of the deceased, it is the evidence of P.W.1 that the deceased Prem Anand was working as an



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operator in Diamond Engineering Private Limited, Chennai and earning a sum of Rs.40,000/- per month. It is her further evidence that after completing his shift, he was working as a driver in OMR Travels and earning a sum of Rs.20,000/- per month. In order to substantiate the avocation and income, Ex.P.14 and Ex.P.15 are marked. Ex.P.14-Pay Certificate and Ex.P.15-Copy of the Final Settlement Demand Draft with covering letter. None was examined in connection with the above said documents. Therefore, the Tribunal fixed the notional income at Rs.13,000/- per month. As per Ex.P.14, his gross salary is mentioned as Rs.16,350/- inclusive of conveyance and performance allowance. His salary is safely fixed at Rs.14,000/-.

8.As per Ex.P.2-Post Mortem Certificate, the age of the deceased is mentioned as 46 and the same is taken as the age of the deceased at the relevant point of time. As held in ***National Insurance Company Vs Pranay Sethi and others***, reported in ***2013(1)TNMAC 481 SC***, for the persons who are between 40 and 50 years of age, 25% has to be added for future prospects. As the claimants are five in number as held in ***Sarala***



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Varma and others Vs Delhi Transport Corporation and another, reported in **2009(2) TNMAC 1**, 1/4th has to be deducted towards personal and living expenses of the deceased and the relevant multiplier to be added as '13m'. In order to compute the loss of income, the following formula emerges: $14,000 + 25/100 - \frac{1}{4} \times 12 \times 13 = 20,47,500/-$.

9.The learned counsel for the second respondent/Insurance company would strenuously contend that the deceased while crossing the road, the accident happened and he has invited the accident. He would further contend that in the said details, the Tribunal has fixed contributory negligence upon the deceased at 20% is correct. P.W.2-Sundaraj, in the capacity of ocular witness was examined. On the second respondent's side, no ocular witness was examined. As regards the details of the accident, it is the evidence of P.W.2 that 09.09.2024 at about 05.10 a.m., when he was standing on the Perunkulathur bus stand in order to go for work, a lorry bearing Registration No.TN-16-C-9932 came in a rash and negligent manner proceeded in north to south direction and hit on the deceased. Therefore, from the evidence of P.W.2, as regards the



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contributory negligence on the part of the deceased, nothing was elicited, during his cross-examination. In the absence of those details, only based on the rough sketch, it cannot be decided. While so, to substantiate the said details, no ocular evidence was examined by the Insurance Company. Therefore, fixing of contributory negligence at 20% upon the deceased is to be necessarily interfered with and the said findings stand set aside.

10.For loss of consortium, considering the number of the dependencies, a sum of Rs.60,000/- was granted, in addition to the amount already awarded by the Tribunal. As regards the other heads, the amounts awarded by the Tribunal appears to be acceptable and reasonable and it needs no interference. The compensation awarded by the Tribunal is reworked and tabulated hereunder.

S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1.	For Loss of Income	Rs.19,01,328/-	Rs.20,47,500/-	Enhanced
2.	For Loss of Consortium	Rs.40,000/-	Rs.60,000/-	Enhanced
3	For Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4	For Loss of Love and Affection	Rs.2,00,000/-	Rs.2,00,000/-	Confirmed
5	For Funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
6	For Ambulance Charges	Rs.10,000/-	Rs.10,000/-	Confirmed



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S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
	Total	Rs.21,81,328/-	Rs.23,47,500/-	
	20% of the total amount which the petitioners have to forgo due to the negligence and violation of Act of the deceased Prem Anand	Rs.4,36,266/-	Nil	Set aside
	For 80%	Rs.17,45,062/-	Rs.23,47,500/-	Enhanced by Rs.6,02,438/-

11. In the result,

(i) The Civil Miscellaneous Appeal stands partly allowed.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.17,45,062/- to Rs.23,47,500/-.

(iii) The third respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.23,47,500/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.195 of 2021 on the file of Motor Accidents Claims Tribunal /Mahila Court, Pudukkottai, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellants 1 to 3 and



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5/claimants are permitted to withdraw their shares along with interest and costs as apportioned by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. As the fourth appellant/claimant is a minor, the Tribunal shall deposit the share of the minor claimant in a Fixed Deposit in any one of the Nationalized Banks, till the minor claimant attains majority. The guardian of the minor claimant is permitted to withdraw the interest accrued thereon once in three months directly from the bank. Out of the enhanced compensation, a sum of Rs.60,244/- shall be deducted towards income tax

(v) The claimants/appellants are directed to pay the Court fee for the enhanced compensation amount, if required.

(vi) The Tribunal shall disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

(vii)No costs.

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NCC:Yes/No

Index:Yes/No

Internet::Yes/No



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To

1.The Motor Accident Claims Tribunal/
Mahila Court,
Pudukottai.



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R. KALAIMATHI,J.

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