



C.M.A.(MD)No.858 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : .01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

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1. Alagumani

2. Nandhini

(2nd appellant is declared as major and the guardianship of her mother appellant No.1-Alagumani is discharged vide Court order dated 13.12.2023 made in CMP(MD)Nos.16846 and 16849 of 2023 in CMA(MD)SR No.81625 of 2023

3. Monor Manikandan

4. Minor Nishanthini

(Appellant Nos.3 and 4 are represented by their Natural Guardian and mother 1st Appellant Alagumani)

... Appellants

vs.

1. The Manager,
M/s. Tamil Nadu Minerals Ltd.,
No.41, Chennai Road,
Melur, Madurai District.

2. M/s.United India Insurance Co.ltd.,
No.4, Promenade Road,
Cantonment, Trichy – 620 001.

... Respondents



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PRAYER: Civil Miscellaneous Appeal is filed under Section 73 of Motor Vehicles act, to enhance the compensation against award amount of Rs. 15,11,100/- passed in M.C.O.P.No.770 of 2017 order dated 23.03.2022 on the file of the Special District Judge, (Motor Accidents Claims Tribunal), Trichy, and allow this appeal.

For appellants	: Mr.R.Ramachandran
For R-1	: Mr.A.K.Manikkam
For R-2	: Mr.I.Sudhakaran

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the award dated 23.03.2022 passed in M.C.O.P.No.770 of 2017, on the file of the Motor Accidents Claim Tribunal/Special District Judge, Trichy, for enhancement of compensation.

2. Heard learned counsel on both sides and perused the records.

3. The grievance of the learned Counsel appearing for the appellants is



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that the contributory negligence fixed at 10% on the deceased is incorrect.

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4. The learned Counsel for the second respondent would contend that it is the deceased who came in a two-wheeler bearing Registration No.TN 63 AZ 4234, without any care and caution and invited the accident.

5. P.W.2 and R.W.1 are the ocular witnesses.

6. It is the evidence of P.W.1/Nallusamy that on 17.10.2015 at about 09.45 p.m., while he was travelling from West to East direction in his two-wheeler along Kovilpatti Road, on the same direction, the deceased was proceeding in his two-wheeler on the left hand side, when he was nearing usilai oorani, a Government Lorry bearing Registration No.TN 59 W 0019 proceeding from East to West, came in a rash and negligent manner with a dash light and hit on the two-wheeler of the deceased and the deceased was thrown out and succumbed to injuries. During the cross-examination of P.W. 2, he would state that the accident occurred on the northern side of the East-West road.



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7. The driver of the first respondent's Lorry, R.W.1/Palanivelu would state that he was driving his lorry from East-West direction diligently and it is only the rider of two-wheeler, the deceased came in the opposite side in a rash and negligent manner and hit upon the lorry. From the testimony of P.W.2, R.W.1 coupled with Ex.P.5 rough sketch and Ex.X.1, inspection report of Motor Vehicles, involved in the accident (two-wheeler of the deceased), it is pellucid that the accident occurred in the East-West road on the northern side and the deceased was proceeding on his route and it is only because of the rash and negligent driving of the driver of first respondent's vehicle, the accident has occurred. The rider of the two-wheeler was not at fault and fixing of contributory negligent at 10% on the deceased is hereby set aside.

8. The next point put forth by the learned Counsel appearing for the appellants is that the monthly income of the deceased was fixed at Rs.7,500/- by adding future prospects which was fixed as Rs.10,500/- is less. It is the evidence of P.W.1 that the deceased was working as Mason and he was earning a sum of Rs.600/- per day. Based on Ex.P.8, his age is fixed as 34 cannot be found fault with.



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9. Upon consideration of the age and avocation of the deceased, his income is safely fixed at Rs.12,000/-, for computing income 40% future prospect is to be added. The loss of dependency is computed as per the above said details i.e., $12,000 + 40\% - 1/4 \times 12 \times 16 = \text{Rs.}24,19,200/-$, for loss of consortium that the four claimants, namely, wife and children, an amount of Rs.1,05,000/- has been granted by the Tribunal. As per the law laid down by the Hon'ble Supreme Court in in the case of National Insurance Company Vs. Pranay Sethi and others reported in (2017) 2 TNMAC 609, in which the claimant is entitled for Rs.40,000/- for loss of consortium. Therefore, an amount of Rs.20,000/- is granted for loss of consortium in addition to the amount already granted by the tribunal. For loss of estate, an amount of Rs.5,000/- is granted in addition to the amount already granted by the Tribunal and for funeral expenses, an amount of Rs.5000/- is granted in addition to the amount already granted by the Tribunal. The compensation awarded by the Tribunal is re-worked and tabulated is given below:



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S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Dependency (12,000+(40/100)- (1/4)x12x 16=Rs, 24,19,200/-)	Rs. 15,12,000/-	Rs.24,19,200/-	Enhanced
2	Transportation Charges	Rs.7,000/-	Rs.7,000/-	Confirmed
3	Loss of Estate	Rs.10,000/-	Rs.15,000/-	Enhanced
4	Loss of Consortium	Rs.35,000/-	Rs.55,000/-	Enhanced
5	Parental Consortium for claimants No.2 to 4	Rs.1,05,000/-	Rs.1,05,000/-	Confirmed
6	Funeral Expenses	Rs.10,000/-	Rs.15,000/-	Enhanced
	Total	Rs. 16,79,000/-	Rs.26,16,200/-	Enhanced by Rs. 9,37,200/-

10. In the result,

(i) The Civil Miscellaneous Appeal stands partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.16,79,000/- to Rs.26,16,200/-.



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(iii) The Insurance Company is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.26,16,200 (less the amount already deposited if any) to the credit of M.C.O.P.No.770 of 2017 on the file of Motor Accidents Claims Tribunal /Special District Judge, Trichy, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

(iv) Out of the enhanced award amount, the first appellant is entitled to a sum of Rs.18,66,200/- and the appellants No.2 to 4 are entitled to a sum of Rs.2,50,000/- each as compensation.

(v) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(vi) The share of the minors/3rd and 4th appellants shall be deposited in any one of the nationalized bank till the minor attains majority and the 1st appellant, mother of the minor Mrs.Alagumani, is permitted to withdraw



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interest once in three months from the said amount.

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

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

.01.2025

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

1. The Special District Judge, Trichy.

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



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R.KALAIMATHI,J

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Pre-delivery order made in
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