



C.M.A(MD)No.358 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

and

THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.358 of 2020

and

C.M.P.(MD).No.4641 of 2020

The Divisional Manager,
M/s.United India Insurance Company Ltd.,
Divisional Office,
Kandasamy Shopping Complex,
Chithrakoodam, Kalpana Road,
Udumalpet – 646 126, and
Divisional Office at Promenade Road,
Cantonment, Trichy – 1.

...Appellant

Vs.

1.Saroja

2.Sathiya

3.Minor Tamil Thendral

4.Padmavathi

5.Thirumoorthy

...Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 28.02.2020 passed in M.C.O.P.No.148 of 2015 on the file of the Motor Accident Claims Tribunal, Thiruchirappalli (In the Court of Special District Judge to deal with MCOP cases, Thiruchirappalli).



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For Appellant : Mr.C.Karthik
For R1, R2 & R4
(R3-minor rep. by R1 : Mr.T.Senthilkumar
For R5 : Mr.S.Prasanth

JUDGMENT

[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN, J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal, Thiruchirappalli (In the Court of Special District Judge to deal with MCOP cases, Thiruchirappalli) in M.C.O.P.No.148 of 2015, dated 28.02.2020, the insurance company has filed the present appeal.

2.The claimants filed the claim petition in M.C.O.P.No.148 of 2015, claiming a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation for the death of the husband of the first claimant. By the award, dated 28.02.2020, the Tribunal awarded a sum of Rs.18,51,000/- (Rupees Eighteen Lakhs and Fifty One Thousand only) as compensation along with 7.5% interest from the date of filing of the claim petition.



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3.Facts of the Case:-

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According to the claimants, on 28.08.2014, at about 19.30 hours, when the deceased was standing on the left extreme of Trichy to Tanjore main road near Anna Arch, Thuvakudi, Trichy, an Indica Car bearing Reg.No.TN 38 AE 3537 driven by its driver in a rash and negligent manner, hit against the deceased, due to which, he sustained fatal injuries and succumbed to injuries on 29.08.2014. FIR was also registered against the driver of the Car. The accident occurred only due to the rash and negligent driving of the driver of the car. The deceased was a Mason and earned Rs.500/- per day with Batta. Therefore, the claimants filed the claim petition, claiming a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation.

4.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition. The appellant insurance company contended that the car did not involve in the said accident and it has been falsely implicated in this case and hence, he prayed for dismissal of the claim petition.



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5.Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and 6 documents were marked as Ex.P1 to P6. On the side of the insurance company, R.W.1 was examined and no documents were marked. On the side of the Court, documents Ex.X1 and Ex.X2 were marked.

6. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and the respondents held that the accident occurred only due to the rash and negligent driving by the driver of the car bearing Reg.No. TN 38 AE 3537 and directed the appellant Insurance Company, to pay a sum of Rs. 18,51,000/- (Rupees Eighteen Lakhs and Fifty One Thousand only) as compensation along with 7.5% interest from the date of filing of the claim petition under the following heads are as follows:-

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
Loss of Dependency	Rs.15,75,000/-
Consortium to the 1 st respondent, the wife of the deceased	Rs. 40,000/-



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Parental Consortium to the 2 nd and 3 rd respondents, the children of the deceased (40,000 x 2 = 80,000)	Rs. 80,000/-
Filial Consortium to the 4 th respondent, the mother of the deceased Rs.40,000/-	Rs. 40,000/-
Love and Affection to the respondents No.1 to 4	Rs. 80,000/-
Transportation Expenses	Rs. 6,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.18,51,000/-

7. Aggrieved against the said award dated 28.02.2020, the appellant insurance company has filed the present appeal.

8. Submission of the learned Counsel for the Appellant:

The learned counsel appearing for the appellant insurance company submits that the amount awarded by the Tribunal is erroneous and the Tribunal has not considered the fact that the car did not involve in the accident. According to the appellant and the fifth respondent, only the car bearing Reg.No.TN-38-AB-3537 is involved in the accident. Further, he submits that the place of the accident is 3 km away from the tollgate. The car bearing Reg.No.TN-38-AE-3537 crossed the tollgate at 06.41 pm on the date of the accident. The evidence of PW2 also clearly shows that the place of accident is 3 km away from the tollgate. Then, the car bearing



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Reg.No.TN-38-AE-3537 would have crossed the place of accident at about 6.51 pm, ie., within 10 minutes. Therefore, the car bearing Reg.No.TN-38-AE-3537 did not involve in the accident. The Tribunal has also erred in awarding a sum of Rs.1,60,000/- (Rs.40,000/- each claimant) towards consortium and also awarding another sum of Rs.80,000/- towards love and affection. Hence, he prays to set aside the award.

9.Submission of the learned counsel for the respondents:

Per contra, the learned counsel appearing for the respondents stood by the order of the award.

10.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.

11. The following points arise for consideration of this appeal:

11.1. Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?



11.2. Whether the compensation granted is in accordance with law?

12.Discussion on the negligence:

The appellant disputed the involvement of the insured vehicle in the accident. According to them, the vehicle crossed the toll gate much earlier to the accident. But, this Court is unable to accept the said contention. This Court perused the entire records. Further, considered the evidence of the independent eye witness P.W.2 and the driver of the vehicle R.W.1. FIR and final report was laid against the vehicle of the appellant insurance company and R.W.1 also arrayed as accused. Even as per the evidence of R.W.1, his case was that the vehicle passed through the toll gate and it is not his case that the vehicle had not plied in the said area ie, there is no total denial of plying of the vehicle. His case is that the vehicle reached the toll gate before the alleged time of the accident. But, P.W.2 affirmatively deposed that the said vehicle alone hit the deceased. In the said circumstances, independent evidence of P.W.2 should be placed on high pedestal than the interested testimony of R.W.1. The same was corroborated by the filing of the final report against R.W.1. He has



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not challenged the same till date. P.W.2's presence is natural and his evidence is cogent and trustworthy and there is no reason to disbelieve his version and also no circumstances were elicited during the course of his cross examination either to dispute his presence or disbelieve his version. The accident took place around 7.30 pm. The accident place is 3Kms away from the toll gate and the vehicle is Indica Car. The said car crossed the Toll-gate at 6.41 p.m. Therefore, there is every reason to believe the deposition of P.W.2/independent witness who has no motive against R.W.1 to falsely implicate his vehicle. Apart from that, he is also not relative of the deceased. Hence, in all probabilities, the claimants established their case of involvement of R.W.1's vehicle in the accident. The learned Tribunal Judge has appreciated the said fact and this Court finds no reason to interfere with. It is settled principle that when the learned Tribunal Judge has appreciated the fact and circumstances of the case and accepted the evidence of the eye witness and disbelieved the evidence of R.W.1, this Court has limited jurisdiction to interfere with the said finding unless the said finding is perverse and against the record. This Court finds no perversity in the appreciation of the learned Tribunal Judge. Therefore, this Court concurs with the finding of the learned trial



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Judge that the driver of the vehicle of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation.

13. Discussion on quantum:

Ex.P.6 is the copy of Identity Card in the name of deceased Anthony, issued by the Secretary of Tamil Nadu Building Workers Welfare Board, Chennai, in which it is noted that the deceased was a Mason. The claimants have not submitted any proof for the income of the deceased as mason. In Ex.P.3/Postmortem Certificate, the age of the deceased is noted as 42 years. There is no contra evidence available in this aspect. Hence, the Tribunal has taken a sum of Rs.12,500/- as a monthly salary of the deceased and taking into account the age of the deceased as 42 years at the time of the accident, correctly applied the multiplier of 14 and deducted $\frac{1}{4}$ towards his personal expenditure and also awarded 25% of future prospects and added the conventional damages and arrived the amount of compensation as Rs.18,51,000/-. This Court finds no reason to interfere with.



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WEB COPY 14.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified amount by this Court</i>	<i>Status</i>
Loss of Dependency	Rs.15,75,000/-	Rs.15,75,000/-	confirmed
Consortium to the 1 st respondent, the wife of the deceased	Rs. 40,000/-	Rs. 40,000/-	confirmed
Love and Affection to the respondents No.2 to 4	Rs. 2,00,000/-	Rs. 1,20,000/-	reduced
Transportation Expenses	Rs. 6,000/-	Rs. 6,000/-	confirmed
Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	confirmed
Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	confirmed
Total	Rs.18,51,000/-	Rs.17,71,000/-	Reduced

15.Accordingly, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded in M.C.O.P.No.148 of 2015, on the file of the Motor Accident Claims Tribunal, Tiruchirappalli (In the Court of Special District Judge to deal with MCOP cases, Tiruchirappalli) dated 28.02.2020 is hereby reduced from Rs.18,51,000/- to Rs.17,71,000/-. The appellant/Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less any amount if already deposited, within a period of one month from the date of receipt of a copy

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of this order. On such deposit, the claimants are entitled to the award amount as apportioned hereunder by making necessary application:

Sl.No.	claimant	amount
1	Wife	Rs.7,00,000/-
2	Children (each) respondents 2 and 3	Rs.4,30,000/-
3	Mother of the deceased	Rs.2,11,000/-

The Tribunal, can less the amount, if any already withdrawn. Further, the Tribunal shall deposit the share of the minor claimant in any one of the Nationalized Banks, as a Fixed Deposit under the Cumulative Deposit Scheme, till the minors attain majority. The mother / guardian of the minors is permitted to withdraw the interest accrued thereon once in three months directly from the bank. The minor claimants on attaining majority are permitted to withdraw their share. The insurance company is permitted to withdraw the remaining amount, if already deposited. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
23.02.2024

Index:Yes/No
Internet:Yes/No
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To

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1. The Motor Accident Claims Tribunal,
Thiruchirappalli.
(In the Court of Special District Judge
to deal with MCOP cases, Thiruchirappalli)
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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