

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.748 of 2012
and M.P.No.1 of 2012

Manager, Third Party Claims Cell,
The Oriental Insurance Co. Ltd.,
Oriental House, 2nd Floor,
No.115/2016, Prakasam Salai,
Broadway, Chennai -
108. Appellant/2nd Respondent

Vs

1.G.Prema

2.A.Govindan

3.Shanmugam Respondents/Petitioners 1
& 2 and 1st Respondent

(3rd respondent remained exparte and notice
dispensed with for him)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the Judgment and Decree
made in M A C T.O.P.No.116 of 2009 on the file of the Motor
Accidents Claims Tribunal (Chief Judicial Magistrate) at
Chengalpattu dated 3.8.2011.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : R1 - not ready in notice
Mr.S.Udayakumar for R2
R3-Ex parte before Tribunal

J U D G M E N T

The instant appeal has been filed by the Insurance Company
challenging the Award dated 03.08.2011, passed by the Motor
Accident Claims Tribunal (Chief Judicial Magistrate),
Chengalpattu in M.A.C.T.O.P.No.116 of 2009.

2.The brief facts leading to the filing of the instant
appeal are as follows:

(i) One Rajesh aged 23 years died on 07.04.2008 as a result of an accident caused by a lorry bearing Registration No. TN 04 Q 1368 owned by the third respondent and insured with the Appellant. The respondent Nos. 1 and 2 are the legal representatives of the deceased Rajesh.

(ii) They preferred a claim before the Motor Accident Claims Tribunal in M.A.C.T.O.P.No.116 of 2009, seeking a compensation of Rs.6,00,000/- for the death of Rajesh.

(iii) The Motor Accident Claims Tribunal by its Award dated 03.08.2011 in M.A.C.T.O.P.No.116 of 2009, directed the Appellant to pay 50% of total compensation amount assessed by the Tribunal to the respondent Nos. 1 and 2.

(iv) The Tribunal under the impugned Award has assessed the total compensation at Rs.8,31,000/- and directed the Appellant to pay the respondent Nos. 1 and 2, a sum of Rs.4,15,500/- together with interest at 7.5% per annum from date of claim till the date of realization. The Tribunal under the impugned Award attributed contributory negligence between the driver of the insured vehicle and the deceased, who was the rider of the Motor cycle in the ratio of 50:50.

3. Aggrieved by the Award dated 03.08.2011, passed in M.A.C.T.O.P.No.116 of 2009, the instant appeal has been filed by the Insurance Company.

4. Heard, Mr. M. Krishnamoorthy, learned Counsel for the Appellant and Mr. S. Udayakumar, learned Counsel for the second respondent and the third respondent has remained ex parte both before the Tribunal as well as before this Court.

5. According to the learned Counsel for the Appellant, the accident happened only due to the negligence of the deceased who rode the Motor cycle in a rash and negligent manner with uncontrollable speed and dashed against the rear side of the lorry, which is insured with the Appellant and which was kept parked on the left side of the road with parking lights. According to him, the Tribunal ought to have fixed the entire negligence on the deceased, as the Police Authorities have come to the conclusion that the deceased was responsible for the accident and closed the case as charge abated in view of the death of the victim.

6.The learned Counsel for the Appellant would further contend that the quantum of compensation awarded by the Tribunal under the impugned Award is also excessive. He would contend that the deceased was only a student at the time of the accident and considering the year of the accident, which is in the year 2008, the Tribunal ought not to have assessed the notional monthly income of the deceased at Rs.6,000/- which is on the higher side.

7.Per contra, the learned Counsel for the respondent Nos.1 and 2 would submit that the deceased was an MBA student at the time of the accident and even though, the respondent Nos.1 and 2 have not challenged the findings of the Tribunal that the deceased was also responsible for the cause of the accident, the quantum of compensation awarded by the Tribunal is not excessive.

8.This Court after having considered the materials available on record, and after examining the impugned Award and after hearing the submissions of the respective Counsels, observes the following:

(a)The Tribunal under the impugned Award has awarded a total compensation of Rs.8,31,000/-, but has attributed contributory negligence on the part of the deceased as well as on the part of the driver of the insured vehicle in the ratio of 50:50. This conclusion was reached at by the Tribunal only after examining the oral and documentary evidence placed before the Tribunal. The Tribunal has considered the FIR and only thereafter has given the above mentioned finding. Therefore, in the considered view of this Court, the finding of the Tribunal attributing contributory negligence on both the driver of the insured vehicle as well as the deceased is perfectly in order.

(b)The Tribunal under the impugned Award has assessed the notional monthly income of the deceased at Rs.6,000/- without any basis. The respondent Nos.1 and 2 have produced the MBA admission card, which is marked as Ex.P-6 before the Tribunal to show that he was an MBA student. Considering the year of the accident, which is in the year 2008, this Court is of the considered view that the assessment of the notional monthly income of the deceased who was a student at Rs.6,000/- is high and it has to be reduced to Rs.5,000/-. Further, the Tribunal under the impugned Award has erroneously applied the 17 multiplier, but the deceased was aged 23 years at the time of the accident, the correct multiplier to be adopted is 18.

9.In the light of the above observations, the total compensation assessed by the Tribunal under the impugned award is reduced to Rs.7,71,000/- from Rs.8,31,000/- as detailed below:

S.No.	Heads	Modified amount
1	Loss of dependency	Rs.7,56,000/-
2	Funeral expenses	Rs.5,000/-
3	Loss of love and affection	Rs.10,000/-
	Total	Rs.7,71,000/-

10.In the result, the appeal is partly allowed and the impugned Award dated 03.08.2011 is modified. The Appellant is directed to deposit 50% of the modified amount i.e, Rs.3,85,500/-(50% of Rs.7,71,000 = Rs.3,85,500) together with interest at 7.5% per annum from date of claim till the date of realization, after deducting the amount already deposited, if any, to the credit of M.A.C.T.O.P.No.116 of 2009, on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Chengalpattu, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent Nos.1 and 2 are permitted to withdraw the said sum as per the apportionment made by the Tribunal by filing an appropriate application. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate), Chengalpattu.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.73983

+1cc to Mr.S.Udayakumar, Advocate Sr.74075

C.M.A.No.748 of 2012
and M.P.No.1 of 2012

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srg 20/12/2018



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