



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.106 of 2019
and
C.M.P. (MD)No.1201 of 2019

M/s.National Insurance Company Limited,
Represented through its Divisional Manager,
7A, West Veli Street,
Madurai.

... Appellant/2nd respondent

.Vs.

1.Vaishnudevi

2.Minor Pranav

... Respondents 1 & 2/
Petitioners

3.M.Ezhilukarasi

...Respondents No.3/Respondent 1

4.A.N.Jeyakodi

5.J.Sakunthala

(Minor 2nd Respondent is represented through his mother and
Guardian Vaishudevi, the 1st Respondent herein)

... Respondents 4&5/
Respondents 3 & 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the judgement and decree dated
31.01.2018 made in M.C.O.P.No.206 of 2011 on the file of the Motor
Accident Claims Tribunal, V Additional District Court, Madurai.

For Appellant : Mr.J.S.Murali
For R1 : Mr.G.Murugan
For R4 & R5 : Mr.J.Alaguram Jothi

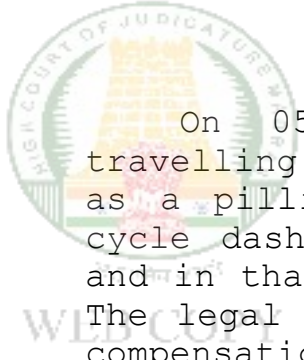
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JUDGMENT

This appeal is directed against the Judgment and decree passed
in M.C.O.P.No.206 of 2011, dated 31.01.2018, by the Motor Accident
Claims Tribunal, V Additional District Judge, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The brief facts of the case:-



On 05.02.2010, at about 08.45 p.m., the deceased was travelling in a motor cycle bearing registration No.TN 06 G 0093, as a pillion rider in Darmapuri to Salem main road. The motor cycle dashed against a car bearing registration No.TN 30 A 8088 and in that process, the deceased fell down and died on the spot. The legal heirs of the deceased filed the claim petition seeking compensation of Rs.50,04,500/-, contending that the accident had occurred due to the negligence of the driver of the car. The claim is resisted by the appellant by filing a counter denying the manner of accident and their liability.

3.Before the Tribunal, the claimants examined 3 witnesses and marked Exs.P1 to P12 and on the side of the respondent, four witnesses were examined and Exs.R1 to R6 were marked.

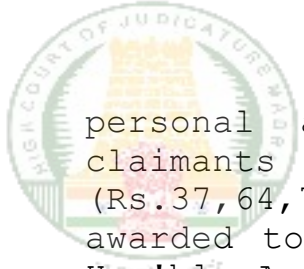
4.Upon consideration of the oral and documentary evidence, the Tribunal came to the conclusion that the driver of the car was responsible for the accident and awarded compensation of Rs.29,17,824/-. Challenging the award, the present appeal has been filed by the appellant/Insurance Company.

5.Mr.J.S.Murali, learned counsel for the appellant would argue that as per the Motor Vehicle Rules, the rider of the motor cycle ought to have given 10 meters distance and if that is followed, the accident would not have taken place. It is further contended that the Tribunal has awarded a sum of Rs.4,08,000/- towards conventional damages and as per the decision of the Hon'ble Supreme Court in **NATIONAL INSURANCE COMPANY LTD Vs. PRANAY SETHI AND OTHERS**, reported in **2017 (2) TNMAC 609 (SC)**, the claimants are entitled only for a sum of Rs.70,000/- under the head.

6.Per contra, the learned counsel for the respondents/claimants would argue that the first claimant lost her husband at her young age and the second claimant is also a minor and hence, they are entitled for more compensation for conventional damages.

7.The evidence of the claimants would clearly establish that the accident had occurred only due to the negligence of the driver of the car and hence, we do not find any reason to interfere with the finding on the negligence.

8.With regard to the quantum of compensation, the Tribunal, based on the salary certificate and the age of the deceased, had arrived at a compensation under the loss of dependency at Rs.37,64,736/- and after deducting 1/3 towards his personal and living expenses, awarded a compensation of Rs.25,09,824/-. The Hon'ble Apex Court in **2009 (2) TN MAC 1 (SC) (Smt.Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr)**, has held that if the dependents are four in number, 1/4 has to be deducted towards



personal and living expenses. Hence, by deducting 1/4, the claimants would be entitled for Rs.28,23,552/- (Rs.37,64,736 - Rs.9,41,184). In respect of the compensation awarded towards conventional damages, as per the decision of the Hon'ble Apex Court referred supra, the claimants are entitled only a sum of Rs.70,000/-. Accordingly, the same is reduced from Rs.4,08,000/- to Rs.70,000/-.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Motor Accident Claims Tribunal, V Additional District Court, Madurai, is hereby modified. The total compensation awarded by the Tribunal is reduced from **Rs.29,17,824/-** to **Rs.28,93,552/-**. The appellant/Insurance Company shall deposit the modified award amount within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the major claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal, on making out an appropriate application before the Tribunal. The share of the minor shall be deposited in Indian Bank, High Court Branch, Madurai in a Fixed Deposit scheme, till he attains majority. The mother of the minor claimant is permitted to withdraw the interest of minor share once in three months for the welfare of the minor. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To
The V Additional District Judge,
Motor Accident Claims Tribunal,
Madurai.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-47165[F] dated 14/02/2019)
+1 CC to M/s.J.S.MURALI, Advocate (SR-47367[F] dated 15/02/2019)
+1 CC to M/s.J.ALAGURAM JOTHI, Advocate (SR-47858[F] dated 18/02/2019)

rj2

C.M.A(MD)No.106 of 2019
and

C.M.P. (MD)No.1201 of 2019
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