



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2019

CORAM:

THE HONOURABLE **MRS.JUSTICE S.RAMATHILAGAM**

C.M.A.(MD)No.726 of 2018

and

C.M.P.(MD)No.10547 of 2018

The Branch Manager,
M/s.United India Insurance Co Ltd.,
Theni.

... Appellant/2nd respondent

Vs.

1. Rajkumar
2. Malarselvi
3. Nandakumar
4. Munisamy
to 4

... 1 to 4 Respondents/Petitioners 1

5. Marimuthu

... 5th Respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act, 1869, to set aside the order passed by the learned Motor Accident Claim Tribunal/Additional District Court, (FTC) Theni, dated 20.03.2018 in M.C.O.P.No.229 of 2015 as against the appellant and allow the appeal.

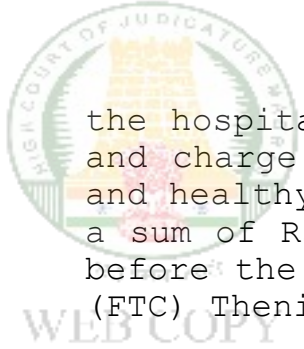
For Appellant	: Mr.N.Dilip Kumar
For R1 to R3	: Mr.K.Suresh Kumar
For R4	: No Appearance
For R5	: No Appearance

J U D G M E N T

The civil miscellaneous appeal has been preferred against the judgment the decree passed in M.C.O.P.No.229 of 2015 on the file of the learned Motor Accident Claim Tribunal/Additional District Court, (FTC) Theni dated 20.03.2018.

2.The brief facts of the case are as follows:

3.1.On 13.08.2015 at about 08.45 a.m, when the deceased along with number of persons were travelling in a Auto Rickshaw bearing Registration No.TN 60 F 9739 for the purpose of doing building work. When the auto proceeding in the Eswaran Kovil, due to rash and negligence driving of the auto driver, the auto was capsized and all persons who were travelled in the auto were discharged from the said auto and due to the said accident, they were sustained grievous injuries. The deceased Chitra is one among them immediately taken to



the hospital, but she was died. Thereafter, FIR has been registered and charge sheet was also framed. The claimants who lost the cute and healthy person aged about 35 years claiming the compensation for a sum of Rs.10,00,000/- and hence they filed M.C.O.P.No.229 of 2015 before the Motor Accident Claim Tribunal/Additional District Court, (FTC) Theni .

4.The petitioner/second respondent in his counter statement has denied all the averments made in the claim petition and by contending that the driver of the vehicle one Marimuthu did not held valid driving license at the time of accident. Hence as per the policy condition, the Insurance Company is not liable to pay the compensation claimed by the claimants. He further contended that carried 13 persons in the Auto which was designed and allowed to carry only 4 persons including the driver which violates the policy condition. Hence, the appellant /Insurance Company is not liable to pay compensation.

5.Before the Tribunal, on the side of the claimants, there are two witnesses were examined viz., P.W.1 & P.W.2 and Exhibits P.1 to P.16 documents were marked. On the side of the respondent, two witnesses were examined viz., R.W.1 & R.W.2 and Exhibit R1 was marked. There are three documents were marked as evidential documents.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the claimants and the respondents and also appreciating the evidence on record, has directed the appellant/Insurance Company to pay a compensation of Rs.17,25,000/- along with interest at 7.5% per annum from the date of filing of the claim petition till the date of realisation . Aggrieved against the said order, the Appellant/ Insurance Company has preferred this Civil Miscellaneous Appeal.

7.In the grounds of appeal, the learned counsel for the appellant/Insurance Company has stated that the driver of the insured Auto as responsible for the accident proceeded to award a total compensation of Rs.17,25,000/- to the claimant under various heads. He further contended that in fixing the liability upon the appellant/Insurance Company without considering the fact that the accident had taken place only due to the overloading of the passenger vehicle against the conditions mentioned in the Insurance Policy. Under the insurance policy it is permissible for the auto to carry only six passengers and as against such stipulation and also in violation of the transport permit, the Auto had taken 13 passengers. Hence, the finding of the learned Judge that the fact of overloading is not substantiated by the Insurance Company is perverse and without appreciating the admitted materials produced even on the side of the claimants.

8.The learned counsel for the appellant/Insurance Company further contended that a sum of Rs.1,50,000/- awarded under the heads of loss of love and affection and Rs.1,00,000/- under the head of loss of consortium are very excessive and contrary to the



Constitutional Bench Judgment of the Apex Court deliver in **National Insurance Company Vs. Pranay Sethi reported in 2017 SC 1270**. Hence, the learned counsel prays that the award is liable to be interfered with by this Court.

9. Per contra, the learned counsel appearing for the respondents has contended that the deceased was working daily wager and she earned monthly income of Rs.9,000/-. After her death, the respondents/claimants had lost their entire happiness and her love and affection and hence, they suffered mental agony and irreparable loss and hardship. He further contended that they have no source of income and they are very much depending upon the award amount.

10. On perusal of records and also the evidence, especially the evidence given by P.W.2/husband, this Court finds that the accident was occurred only by the rash and negligent driving of the auto driver and also finds that at the time of occurrence, the driver has allowed number of persons in the said Auto, but the same has not been spoken in the cross examination. Further, from the records, it is seen that there is no eye witness to prove that only because of the number of persons travelled in the said Auto, the said accident was occurred. As per Ex-P2, auto permit, only four persons have to be travelled in the said vehicle, including the driver, whereas, at the time of accident, there were twelve persons travelled in the said vehicle and the place of accident. Hence, the accident was only made by rash and negligence driving of the auto driver as well as the number of members travelled in the said auto.

11. From the above said discussion, the finding of the tribunal needs to be modified. It is a clear case that the auto was capsized for which the auto driver paid the computing fee. It is not only the negligence of driver but also the violation of policy condition. Hence, the liability fixed by the tribunal has to be modified. The sum awarded Rs.1,50,000/- towards love and affection and Rs.1,00,000/- towards consortium are on higher very much on the higher side, and hence, the sum awarded under two heads are modified as Rs.75,000/- and Rs.50,000/- respectively.

12. Accordingly, the award of the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Pecuniary loss	Rs.14,40,000/-	Rs.14,40,000/-
2	Love and affection	Rs. 1,50,000/-	Rs. 75,000/-
3	Consortium	Rs. 1,00,000/-	Rs. 50,000/-
4	Transport expenses	Rs. 5,000/-	Rs. 5,000/-
5	Funeral expenses	Rs. 25,000/-	Rs. 25,000/-
	Total	Rs.17,25,000/-	Rs.16,00,000/-



13. In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is reduced from Rs.17,25,000/- to Rs.16,00,000/-. The appellant/Insurance Company is directed to deposit the sum of Rs.16,00,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any. On such deposit, the claimants are permitted to withdraw their respective shares as apportioned by the Tribunal without filing any formal petition before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

To

The Motor Accident Claim Tribunal/
Additional District Court, (FTC) ,
Theni.

COPY TO:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 cc Mr. K.SURESH KUMAR ,Advocate, SR.No. 55257

C.M.A. (MD) No.726 of 2018
and
C.M.P. (MD) No.10547 of 2018

DSS
KK/SAR/30.07.2019/4P-5C