

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1641 of 2013

National Insurance Co. Ltd.,
37C S.N High Road
Tirunelveli Junction-627 001. Appellant/2nd Respondent

...Vs...

1.Ponni
2.Minor Kavitha @ Vaira Kavitha
3.Minor Kumar @ Arulkumar
4.Minor Suganpriya
5.Minor Thulasimani
(Minors 2 to 5 represented by
NF/guardian/Mother 1st respondent)
6.Kanthayee
7.Palani
8.Palaniammal
9.Thangammal
10.Ponni
11.C.Sairajan Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 30.06.2011 made in MACTOP No.665 of 2008, on the file of the Motor Accident Claims Tribunal, Salem (I Additional District Judge, Salem).

For Appellant : Mr. S.Vadivel

For Respondents : Mr.C.Kulanthaivel-R1 to R6
R7 to R10 - Not pressed
No Appearance - R11

J U D G M E N T
(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 30.06.2011 passed by the Motor Accident Claims Tribunal/ I Additional District Judge, Salem, in MCOP No.665 of 2008.

2. A person by named, Elumalai died on 24.01.2008 as a result of an accident caused by a vehicle insured with the Appellant. The respondents No.1 to 10 in this appeal are the claimants. They preferred a claim before the Motor Accident Claims Tribunal in MCOP No.665 of 2008 seeking compensation for the death of Elumalai .

3. The Motor Accident Clams Tribunal, under the impugned award directed the Insurance Company to pay the claimants, a compensation of Rs.6,01,000/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Dependency of the family	5,76,000/-
Loss of Estate	10,000/-
Loss of Consortium	10,000/-
Transport & Funeral Expenses	5,000/-
Total	6,01,000/-

4. The Appellant/Insurance Company has filed this appeal on the following grounds:

a) The motorcycle in which the deceased was travelling was carrying excess persons. According to them, four persons were travelling in the said vehicle. In view of the same, it is their contention that they are not liable to compensate the claim of the claimants. .

b) The compensation awarded by the Tribunal is excessive.

5. Insofar as the first contention raised by the Appellant is concerned, the Tribunal has rejected the said contention on the ground that the Appellant/Insurance Company has not produced any evidence to show that only due to excess persons travelling in the motorcycle, the accident had happened. The deceased was a pillion rider in the motor cycle.

6. This Court has perused the materials and evidence available on record.

7. Before the Tribunal, the claimants have filed 11 documents which were marked as Ex.P1 to Ex.P11 and two witnesses were examined on their side, namely the first claimant herself as PW1 and an eye witness to the accident as PW2. On the side of the Appellant/Insurance Company, neither any document was

filed nor any witness was examined.

8. As rightly held by the Tribunal, the Appellant/Insurance Company has not produced any evidence before the Tribunal to show that the deceased was responsible for the cause of the accident due to excess persons travelling in the motor cycle in which the deceased was travelling as a pillion rider. This Court does not find any infirmity in the said finding and accordingly, the first contention raised by the Appellant is rejected.

9. Insofar as the second contention raised by the Appellant with regard to the quantum of compensation awarded by the Tribunal is concerned, this Court has perused the pleadings and evidence adduced by the respective parties. In the claim petition, the respondents/claimants have claimed that the deceased was aged 35 years and was carrying on the business in the field of radio, mike and speaker settings and also doing the business of Silk Saree hand loom weaving and was earning Rs.12,000/- per month. However, the Tribunal has assessed the monthly income of the deceased at the time of the accident as Rs.4,500/-. The year of the accident is 2008. Since the year of the accident is 2008 and no documentary evidence was placed, the notional monthly income of the deceased fixed by the Tribunal at Rs.4,500/- is a correct assessment. Therefore, there is no scope for interference with regard to the said assessment. The Tribunal has rightly applied the correct multiplier since the deceased was aged 35 years at the time of the accident. Further, in the case on hand, the Tribunal has not granted any loss of future prospects to the claimants. Since no appeal has been filed by the claimants seeking for enhancement, the said issue need not be decided by this Court. Taking an overall view, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation and there is no scope for interference by this Court.

Conclusion:

10. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal is dismissed. The Appellant/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited, if any to the credit of MCOP.No.665 of 2008 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount along with accrued interest to the bank accounts of the first and sixth respondents/claimants through RTGS within

a period of two weeks thereafter. Since the respondents 2 to 5 are minors, their respective shares of award amount shall be deposited in an interest bearing fixed deposit in any one of the nationalised banks till they attain majority. The first respondent/mother of the minors are permitted to withdraw the interest once in six months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Salem, I Additional District Judge,
Salem.

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

+1cc to Mr.S.Vadivel, Advocate SR.No.28217

C.M.A.No.1641 of 2013

GJ(CO)
GMY(22/04/2021)

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