

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1648 of 2013

The Manager,
United India Insurance Co. Ltd.
Branch Office,
No.13/290, G.B. Road, P.B.No.61,
Palakkad - 678 001.
Kerala State

..Appellant

Versus

1.Pown S/o. Munian

2.Kalyani W/o. Pown

3. R. Vignesh

(3rd respondent was set exparte before the Tribunal)

...Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 25.02.2010 made in M.C.O.P.No.941 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, at Dharmapuri.

For Appellant : Mrs. I.Malar

For Respondent 1&2 : Mr.M. Selvam

J U D G M E N T

This appeal has been preferred by the Insurance Company against the order and decree dated 25.02.2010 made in

M.C.O.P.No.941 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, at Dharmapuri whereby the respondents 1 & 2 were awarded compensation of Rs.4,24,500/- equally by the Tribunal.

2.The Insurance Company/appellant herein is the 2nd respondent, the respondents 1 & 2 herein are the petitioners 1 & 2 who are father and mother of the deceased respectively and the 3rd respondent herein is the 1st respondent before the Tribunal.

3. The brief fact of the case is as follows:

On 20.08.2007, the deceased Nagarani @ Poongodi was riding as pillion rider with the 3rd respondent herein in the motor cycle bearing registration No.KL.09-9462. When the 3rd respondent was proceeding towards occurrence place, he lost balance owing to pathole on the road thereby the deceased suffered severe head injuries. Immediately after accident, she was admitted to the Kovai Medical College Hospital where she died due to fatal injuries after fell down from the motor cycle. In view of the death of the deceased Nagarani@Poongodi, her parents have filed claim petition in M.C.O.P. No.941 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, at Dharmapuri for compensation. After perusal

of oral and documentary evidence, the Tribunal has awarded a sum of Rs. 4,24,500/- to the petitioners 1 & 2/the respondents 1 & 2 herein fixing 25 % of liability on the deceased for her contributory negligence and 75% of liability on the appellant and 3rd respondent herein for their negligence part.

4. Being aggrieved by the aforesaid award of the Tribunal, the Insurance Company/the appellant herein has filed the present petition questioning the liability of 75% on their side.

5.It is contention of the learned counsel for the appellant/Insurance Company that the 3rd respondent who is owner of the vehicle drove the motor cycle very cautiously by observing traffic rules. The deceased fell down from the bike due to crossing of the cyclist on the road. Hence, the insurance company is not liable to pay compensation to the petitioners 1 & 2/respondents 1 & 2 herein. Further, it is also argued by the counsel that the compensation awarded by the Tribunal by adopting multiplier 17 is higher side instead of adopting multiplier 13 when there is no proof of income and insurance coverage to the deceased.

6. Heard, the learned counsel for the appellant and the learned counsel for the 1st and 2nd respondents herein. Despite notice served on the 3rd respondent, he did not appear before this Court as well as the Tribunal. Hence he was set ex-parte before this Court as well as the Tribunal.

7. It is admitted fact on perusal of the oral and documentary evidence that the deceased was travelling as pillion rider in the aforesaid vehicle along with the 3rd respondent. When the cyclist crossed the road, the 3rd respondent hit the pothole on the road without noticing it. As a result, the pillion rider fell down from the bike having suffered fatal injuries and died in the hospital.

8. The 3rd respondent/owner of the vehicle could not control his bike speed as it was driven with rash and negligence manner and hit the pothole on the road without noticing it. The accident could have been averted in case the bike rider was driving with limited speed cautiously, he could have seen the pothole and applied the break avoiding the pothole on the road. At the same time, the pillion rider could have escaped from suffering fatal injuries, if she had gripped the supporting handle in the bike.

9.Considering the aforesaid facts and circumstances, the Tribunal has rightly come to the conclusion fixing the liability on the pillion rider of the motor cycle as 25% and rest of 75% on the motor cycle driver. The income of the deceased was fixed taking into consideration of age factor. In the age of 21 years, the deceased would have earned a sum of Rs.200/- per day easily as if she worked as mason with the 3rd respondent/R.W.1 herein at the time of the accident. It was also arrived for 20 days in a month. Accordingly, the income of the deceased was determined at Rs.4,000/- per month. Accordingly, the annual income of the deceased would come at Rs.48,000/-. Out of this amount, she would have spent 1/3 towards her personal expenses and 2/3 towards her family maintenance. Considering the above, the tribunal has fixed 2/3 monthly dependency at Rs.32,000/- out of 48,000/- and applied multiplier 17 as per 2nd schedule u/s.163(a) of Motor Vehicle Act, considering the age of the deceased was 21 at the time of the accident which is not disputed by the learned counsel for the appellant. After applying multiplier of 17, loss of life dependency comes to Rs.5,44,000/-. Further, the compensation was awarded under other heads including loss of life dependency as under:

Loss of life dependency	:5,44,000.00
Loss of Love and affection each Rs.5000/-	: 10,000.00

Transport Expenses	:	5,000.00
Funeral Expenses	:	5,000.00

Total		5,64,000.00

Totally, the amount is arrived at Rs.5,64,000/- whereas the award amount was passed at Rs.5,66,000/- by awarding of excess Rs.2000/- by the Tribunal. According to the award of the Tribunal, 25% contributory negligent amount of Rs.1,41,000/- is deducted from the total amount and 1st and 2nd petitioners/1st and 2nd respondent herein are entitled to withdraw a sum of Rs.4,23,000/- by dividing 50:50 shares between the petitioners 1 & 2/respondents 1 & 2 herein.

10. It is seen that by order dated 05.07.2013 of this Court for interim stay, the appellant/Insurance Company was directed to deposit 75% of the award amount to the credit of M.C.O.P. No.941 of 2008 on the file of the Motor Accident Claims Tribunal, Principal District Judge, at Dharmapuri and the respondents 1 & 2 were directed to withdraw 50% of the deposited amount from the Tribunal.

11. Hence, The Insurance company is directed to deposit the balance award amount along with interest @ 7.5% p.a. from the date of petition till the date of deposit after deducting excess award amount of Rs.2000/- which is arrived wrongly by the Tribunal and already

deposited as per the Court order within a period of 8 weeks from the date of receipt of copy of this order. The petitioners 1 & 2/ respondents 1 & 2 herein are directed to withdraw the balance award amount equally without filing any formal petition.

12. Under these circumstances, this Court is not inclined to interfere with the award passed otherwise by the Tribunal. Hence, the appeal is dismissed confirming the award passed by the Tribunal. No Costs.

22.01.2020

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Index: Yes/No

Internet: Yes/no

Speaking/Non-speaking Order

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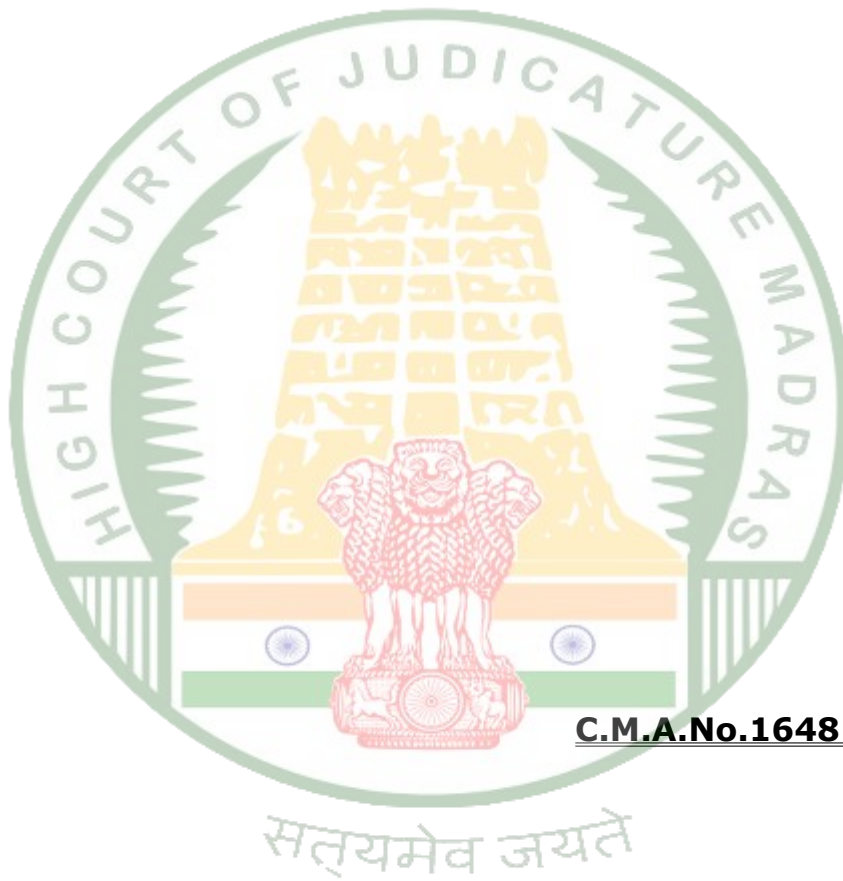
1. The Motor Accident Claims Tribunal, S
Subordinate Judge, Tiruvarur

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

C.M.A.No.1648 of 2013

V.BHAVANI SUBBAROYAN.,J.

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