



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2020

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD)No.1664 of 2008 and

M.P. (MD)No.2 of 2008

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The National Insurance Company Ltd.,
Shri Ram Site Office,
2A Prakasam Road, T.Nagar,
Chennai - 600 017.

... Appellant/2nd Respondent

Vs.

1. Pushpam
2. Kuttiyapillai
3. Vijayalakshmi
4. Sivakumar

... Respondents 1 to 4/
Claimants/Petitioners 1 to 4

5. Balasubramanian

... 5th Respondent/1st Respondent

PRAYER :Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the award made in M.C.O.P.No.137 of 2005 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi, dated 28.03.2008 and allow the appeal.

For Appellant	: Mr.S.Kumar
For R-1 to R-4	: Mr.K.Swamidurai

JUDGMENT

This appeal has been filed by the insurance company, challenging the award passed by the Motor Accident Claims Tribunal/Additional Sub Judge, Tenkasi, made in M.C.O.P.No.137 of 2005 dated 28.03.2008, wherein the Tribunal has awarded Rs.6,75,000/- along with interest at 7.5.% p.a. against the claim of Rs.20,00,000/-.

2. According to the claimants, the son of claimants 1 and 2 and the brother of claimants 3 and 4, namely, Balasubramanian was riding a motor cycle on 28.04.2005 and one Tiwan Nagoor Mohideen was a pillion driver. When the vehicle was proceeding near Alangulam Athiyoothu, a mini lorry owned by the first respondent and insured with the second respondent bearing registration No.TN 76-0994 came in a high speed and hit against the motor cycle. In the accident, the deceased died on the spot.



3. The claim was resisted by the appellant insurance company and contended that the accident has not taken place as alleged by the claimants. Further the age, income and avocation of the deceased were also disputed. It is specifically stated that the claim was excessive.

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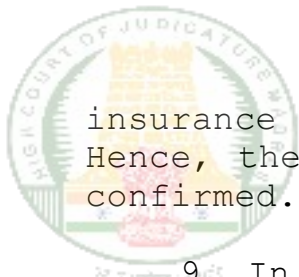
4. During the trial, on behalf of the claimants, P.W.1 and P.W.2 were examined. Ex.P.1 to Ex.P.6 were marked. On the side of the insurance company, three witnesses were examined and Ex.R.1 and Ex.R.2 were marked. On appreciation of the evidence, the Tribunal came to the conclusion that the driver of the lorry was responsible for the accident and awarded compensation as stated above. Challenging the same, the present appeal has been filed.

5. Mr.S.Kumar, learned counsel appearing for the appellant would argue that the Tribunal ought to have dismissed the claim petition on the ground that the vehicle was not involved in the accident as alleged by the claimants. It is also stated that P.W.2 could not have witnessed the occurrence, but the Tribunal relying upon the evidence, held that the vehicle is involved in the accident and the report filed by the insurance company and the evidence of the appellant was not properly appreciated by the Tribunal. It is also argued that the Tribunal erred in adopting multiplier ' 18 ', when the deceased was a bachelor at the time of accident and there was no proper deduction towards personal expenses.

6. Per contra, Mr.K.Samidurai, learned counsel appearing for the claimants made submissions in support of the finding of the Tribunal.

7. In the matter on hand, the accident had taken place on 28.04.2005 at 0.30 a.m. On intimation, the head constable went to the spot and after obtaining statement, the case was registered at 3.00 a.m. in Crime No.205 of 2005. Taking advantage of the fact that the number of the offending vehicle was not mentioned in the complaint, a stand taken by the appellant insurance company that the vehicle was introduced by the claimants to make a false claim against the insurance company.

8. The Tribunal after considering Ex.R.1 and Ex.R.2, held that the reports were prepared without any basis and hence it cannot be relied upon. P.W.2 has spoken the manner of accident before the Tribunal. In support of the case of the claimants, the First Information Report, Motor Vehicle Inspection Report, Rough Sketch, Observation Mahazar and Charge Sheet have been marked before the Tribunal as Ex.P.1, Ex.P.3, Ex.P.5, Ex.P.6 and Ex.P.7. On the basis of the above evidence, the Tribunal held that the driver of the offending vehicle caused the accident. Therefore, the



insurance company and the insurer are liable to pay compensation. Hence, the finding of the Tribunal on the ground of negligence is confirmed.

9. In respect of quantum is concerned, it is the case of the claimants that he was the owner of the photo studio and thereby he was earning Rs.10,000/- per month. However, they could not produce any evidence in support of the claim. Hence, the Tribunal has taken Rs.3,000/- as the monthly income of the deceased and by fixing multiplier '18' awarded compensation of Rs.6,75,000/-. In Pranay Sethi case, the Hon'ble Apex Court has held that for the age group of 26, the claimants are entitled for an addition of 40% towards future prospectus. While taking the income of the deceased as Rs.3,000/- p.m. and by adding 40%, the income of the deceased would come to Rs.4,200/-. Admittedly, the deceased was a bachelor and the age of the deceased was 26 years at the time of accident. The appropriate multiplier would be '9'. 50% has to be deducted for personal expenses and contribution would be Rs.2,100/- and therefore the loss of income would be Rs.2,100/-. $12 \times 9 \times 2100 = 2,26,800/-$. As per the decision of the Hon'ble Supreme Court in Pranay Sethi case, the claimants are entitled for additional amount of Rs.70,000/- towards Loss of Consortium, Loss of Estate and Funeral Expenses. The claimants are entitled to total compensation of Rs.2,96,800, which is rounded off to Rs.3,00,000/- along with interest at 7.5% p.a.

10. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs, less already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, claimants 1 and 2 are entitled to Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) each and claimants 3 and 4 are entitled to Rs.25,000/- (Rupees Twenty Five Thousand only) each. On such deposit being made, the claimants are permitted to withdraw the entire award amount, without filing any formal petition before the Tribunal.

11. With this modification in the matter of quantum, this civil miscellaneous appeal is partly allowed. Consequently, connected miscellaneous petition is closed.

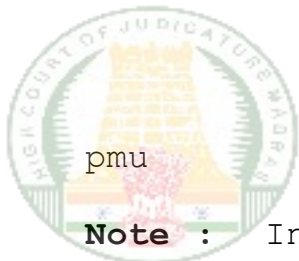
Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar (CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Additional Sub Judge,
Motor Accident Claims Tribunal,
Tenkasi.

Copy to

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

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