



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 26.02.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1750 of 2010

and

M.P. (MD) No.3 of 2010

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National Insurance Company Ltd.,
Rep. by its Branch Manager,
Cuddalore.

.. Appellant/2nd Respondent

vs.

1.Selvamani
2.Thavamani
3.Saran Raj
4.Sharmila
5.Sasikala

.. 1st Respondent/1st Petitioner
..2nd Respondent/2nd Petitioner
..3rd Respondent/3rd Petitioner
..4th Respondent/4th Petitioner
..5th Respondent/5th Petitioner

(Respondents 3 to 5 were declared
as major as per the order dated
26.02.2021)

6.Sattanathan

..6th Respondent/1st Respondent

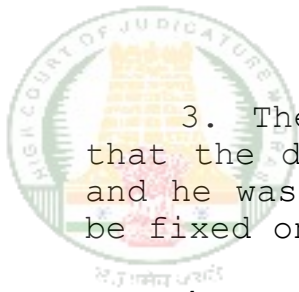
Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 4th February, 2008 made in MCOP No.305 of 2006 on the file of Principal Sub Court, (Motor Accidents Claims Tribunal), Mayiladuthurai.

For Appellant	: Mr.N.Murugesan
For R1 & R2	: Mr.R.Vijayakumar
For R6	: No appearance

J U D G M E N T

This appeal has been filed by the Insurance Company questioning the award of the Motor Accident Claims Tribunal, Principal Sub Court, Mayiladuthurai passed in M.C.O.P.No.305 of 2006.

2. The facts of the case in brief are that the parents and the minor brother and minor sisters of the deceased Raja filed claim petition claiming compensation of Rs.15,00,000/-. According to them, on 11.06.2006 the deceased along with his friend Chelladurai was travelling in a motorcycle bearing Registration No.TN-01-Y-4767 from Chinnagudi to Karaikal. At the time, a tanker lorry bearing Registration No.TN-51-U-4141 owned by the first respondent and insured with the appellant came in a high speed and hit behind the motorcycle. In which, the deceased fell down and run over by the lorry and died on the spot.



3. The appellant herein contested the claim petition stating that the deceased drove the vehicle in a rash and negligent manner and he was responsible for the accident and hence, no liability can be fixed on the Insurance Company.

4. Before the Tribunal, Chelladurai, who travelled with the deceased was examined as P.W.2 and in his evidence, he narrated the manner of accident as set out in the claim petition. He also produced Ex.P1-FIR. So, the Tribunal has rightly held that the accident occurred due to the negligence of the driver of the tanker lorry. Hence, I find no infirmity in the said findings of the Tribunal.

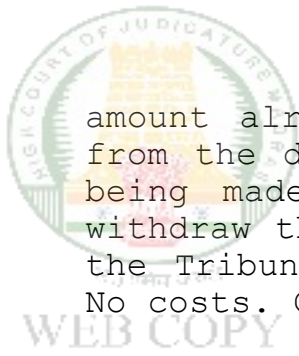
5. With regard to quantum, the deceased died in the age of 23 years and he was a bachelor. It is the case of the claimant that he was owning a motorboat for catching fish, thereby earning Rs.10,000/- per month. But, no evidence was produced in support thereof. Hence, the Tribunal has fixed the notional income at Rs.3,000/- and by applying multiplier '17', awarded a sum of Rs.4,08,000/- as loss of income after deducting 1/3rd for his personal expenses. Rs.1,00,000/- was awarded for loss of love and affection. Rs.5,000/- for funeral expenses and Rs.2,000/- for transportation. In total, the Tribunal awarded a sum of Rs.5,15,000/- as compensation.

6. Mr.N.Murugesan, learned counsel appearing for the appellant contended that when no documentary evidence was produced to prove the income of the deceased, the Tribunal ought not to have taken the notional income at Rs.3,000/- and the award under the loss of love and affection is also on the higher side.

7. I find no substance in the contention of the learned counsel for the appellant for the reason that the first claimant has categorically deposed before the Tribunal that the deceased was earning Rs.10,000/- per month. Since, they were not able to produce any documentary evidence, the Tribunal has fixed the income at Rs.3,000/-. It is relevant to note that parents of the deceased are senior citizen and the other claimants 3 to 5 are the minors and hence, I find no reason to interfere with the award passed by the Tribunal.

8. The claim petition of the year 2006 and at that relevant point of time, the respondents 3 to 5/claimants 3 to 5 were minors and by now, they should have become major. So, they are hereby declared as major and the Tribunal is hereby directed to disburse their share in the award.

9. In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. The appellant and the 6th respondents are directed to deposit the entire award amount, jointly and severally as directed by the Tribunal, with accrued interest and costs, less the



amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents 1 to 5/Claimants are permitted to withdraw the award amount as per the ratio of apportionment made by the Tribunal, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1.The Principal Sub Court,
(Motor Accidents Claims Tribunal),
Mayiladuthurai.
- 2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.MURUGESAN, Advocate (SR-7726[F] dated 01/03/2021)

C.M.A(MD) No.1750 of 2010
26.02.2021

KM(CO)
KK(27.05.2021) 3P 5C