



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 23.12.2020

DATE ON WHICH PRONOUNCED : 22.01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A. (MD) .No.496 of 2010

and

MP (MD) No.1 of 2010

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The Manager,
Iffco Tokyo General Insurance
Company Ltd.,
No.28, (Old No.195) I & II Floor,
North Usman Road,
Chennai.

: Appellant /2nd Respondent

Vs.

1.S.Kaathayee

2.S.Kannan

3.S.Anbarasan

4.S.KArthik Kumar

5.Minor S.Saravanan : Respondents 1 to 5/Petitioners 1 to 5

(5th respondent is represented through his guardian & next friend 1st respondent)

6.P.Sekar : 6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 05.01.2010 made in M.C.O.P.No.778 of 2006 on the file of Motor Accident Claims Tribunal (Additional District Court/Fast Track Court No.2), Madurai.

For Appellant : Mr.S.Srinivasaraghavan
For R1 : Mr.R.Aravinddhan

For R2 to R4 : Mr.R.Murugappan
For R6 : No appearance



JUDGMENT

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order dated 05.01.2010 made in M.C.O.P.No.778 of 2006 on the file of Motor Claims Tribunal (Additional District Court/Fast Track Court No.2), Madurai.

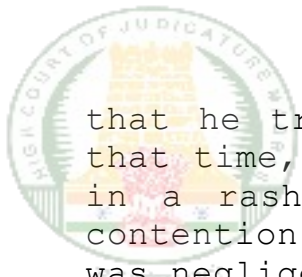
2.The case of the petitioners/claimants before the Tribunal is that on 13.01.2006, at about 10.45 a.m., the deceased was travelling as a pillion rider in a Hero Honda Splender Motorcycle bearing Registration No.TN-59-Q-1539, which was driven by his son, on the Ramanathapuram to Madurai main road. When they were nearing the place of occurrence, a lorry bearing Registration No.TN-60/9016 driven by its driver, in a rash and negligent manner and dashed against the motorcycle. Due to which, the deceased suffered injuries and he was taken to the Government Hospital, Paramakudi, and later shifted to Government Rajaji Hospital, Madurai. There he died on the next day. In respect of occurrence, a case in Crime No.26 of 2006 was registered on the file of the Paramakudi Town Police Station. At the time of occurrence, the deceased was aged about 53 years. He was running a tea and tiffin centre and earning a sum of Rs.15,000/- per month. Claiming compensation amount of Rs.7,00,000/- (Rupees Seven Lakhs Only), the claimants, approached the Tribunal.

3.The case of the appellant/2nd respondent before the Tribunal is that only due to the rash and negligent driving on the part of the rider of the two wheeler, the accident took place and other things were denied conventionally.

4.Before the Tribunal, on the side of the petitioners/claimants, three witness were examined and fourteen documents marked. On the side of the respondent, no witness was examined and no document marked.

5.Based upon the documentary and oral evidence, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the lorry driver and accordingly, it fixes the liability upon the owner and the Insurance Company.

6.Regarding the compensation, by taking into account the age of the deceased and income, fixed the same at Rs.4,46,000/- (Rupees Four Lakhs Forty Six Thousand Only) with 9% interest per annum. So, challenging the same, the appellant/Insurance Company has filed this appeal, in which, the negligent aspect as well as the fixation of compensation are questioned. Regarding the negligent aspect, the informant to the police was examined as P.W.2. In the complaint as well as in the evidence, he would say



that he travelled along with his father in a careful manner. At that time, the first respondent's vehicle driver drove the vehicle in a rash and negligent manner and hit against him. The only contention on the part of the Insurance Company is that only P.W.2 was negligent in his riding.

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7. There is some discrepancy with regard to who was the pillion rider in the vehicle. One time he would say that the deceased is the pillion rider and another time he would say that he is the pillion rider. But, whatever it may be, it is seen that both were riding in the two wheeler at the time of the accident. So, against this, there is no contra evidence on the side of the Insurance Company to prove the manner of the accident. So, the manner of the accident as spoken by P.W.2, clearly shows that only the first respondent's vehicle driver was negligent in his driving. The finding of the Tribunal on these aspects, requires no interference, in the absence of any contra evidence. So, that part of the finding is required to be confirmed.

8. Regarding the compensation, the Tribunal fixed the notional income as Rs.4,500/- and fixed the age as 53 on the basis of the Voters ID Card (Ex.P.8). The Tribunal assessed the notional income on the ground that the tea and tiffin shop alleged to have run by the deceased would have been continued by his sons. So, considering the age of the deceased, fixing of notional income of Rs.4,500/- cannot be considered to be excessive that a man having children, wife and mother would have easily earned a sum of Rs.150/- per day in the relevant period of time. So, this Court find that notional income fixed by the Tribunal also called for no interference. So, multiplier '11' was taken and after adding the conventional amounts, it awarded a sum of Rs.4,46,000/- (Rupees Four Lakhs and Forty Six Thousand Only). I am of the considered view that no interference is called for.

9. Regarding the interest, it fixed the same at 9%. Usually, 7.5% interest is awarded. So, that portion needs no modification. In other aspects, the award passed by the Tribunal is confirmed.

10. In the result, the appeal is partly allowed and the award passed by the Tribunal is confirmed. But, however, rate of interest is reduced from 9% per annum to 7.5% per annum from the date of petition. No costs. Consequently, connected miscellaneous petition is closed.

11. The appellant / Insurance Company Ltd., is directed to deposit the award amount along with the accrued interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit and cost within a period of two months from the date of receipt of a copy of this judgment, if not already deposited. On



such deposit being made, the claimants are permitted to withdraw their share amount as apportioned by the Tribunal except minor. If minor attain majority, he also entitled to withdraw his share.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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

1.The Motor Claims Tribunal
(Additional District Court/Fast Track Court No.2),
Madurai.

COPY TO

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 COPIES).

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-1945
[F] dated 25/01/2021)

Judgment made in
C.M.A. (MD) .No.496 of 2010
and MP(MD)No.1 of 2010
22.01.2021

pk(CO)
TR(16.02.2021) 4P 5C