



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA (MD)No.415 of 2019

and

C.M.P (MD) .No.4968 of 2019

The Divisional Manager
New India Assurance Company Limited
2nd Floor, Jerome Building
Fort Station Road
Trichy - 2

...Appellant/ 2nd Respondent

Vs

1.Francis
2.Kanikkai Mary
3.Daniel Raj

...Respondents 1 to 3/Petitioners

4.S.Sasikala

...4th Respondent/1st Respondent

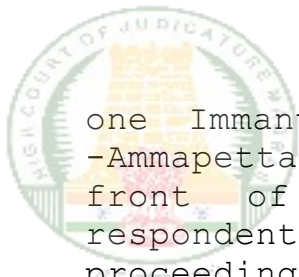
Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicle Act, 1988, to call for the records relating to the Fair and Decreeal order dated 21.12.2018 passed in M.C.O.P.No.570 of 2015 by the Motor Accident Claims Tribunal (Special District Court), Tiruchirappalli and set aside the same without costs.

For Appellant	: Mr.D.Malaichamy
For R1 to R3	: Ms.Jenifer
For R4	: No appearance

J U D G M E N T

This appeal has been filed to call for the records relating to the Fair and Decreeal order dated 21.12.2018 passed in M.C.O.P.No.570 of 2015 by the Motor Accident Claims Tribunal (Special District Court), Tiruchirappalli and to set aside the same without costs.

2.The brief facts of the case is that on 08.02.2015 at about 5.30 p.m, one Velankanni Raj was riding in a Yamaha Two Wheeler bearing Registration No.TN-68-J-9070 along with his friend named



one Immanuvel who was traveling as pillion rider on Ukkadai -Ammapettai Road, when the said Velankanni Raj was proceeding in front of Ammapettai Nethaji Colony Bus Stop, the first respondent's Tipper lorry bearing Registration No.TN-49AF-4252 was proceeding ahead the two wheeler motor cycle in a rash and negligent manner with hectic and uncontrollable speed, after overtaking the said tipper lorry, the two wheeler was proceeding ahead the tipper lorry towards Ammapettai, at the same time, a TVS-50 was proceeding on the above said Ukkadai -Ammapettai road, in order to leave the way to the oncoming TVS-50 two wheeler, the said Velankanni Raj turned his vehicle on left side, at that time, the above said 1st respondent's tipper lorry, without watching the said Velankanni Raj's two wheeler, dashed on his two wheeler and caused the accident. Due to the accident, the Velankanni Raj sustained fatal injuries all over the body and died on the spot. Therefore, the respondents 1 to 3 who are the parents and brother of the deceased Velankanni Raj, filed a claim petition in M.C.O.P. No.570 of 2015 before the Motor Accident Claims Tribunal, Special District Judge, Special District Court, Tiruchirappalli, claiming a sum of Rs.30,00,000/- as compensation. After hearing the oral and documentary evidence, the learned Judge, awarded a sum of Rs.15,42,000/- as compensation with 7.5% interest, against which, the present Civil Miscellaneous Appeal has been filed questioning the negligence and quantum.

3. The learned counsel for the appellant would submit that the deceased himself was negligent and he drove the vehicle in a rash and negligent manner without adhering to the traffic rules. The Tribunal has wrongly fixed the monthly income of the deceased at Rs.7,000/- which is totally illegal as there is no proof for the same and without any proof of self employment, added 40% of income towards future prospects which is totally illegal. In any event, the award of the Tribunal is not based on the sound principles of law and also on the material evidence on record and as such the same is liable to be interfered.

4.Heard the learned counsel for the appellant, respondents 1 to 3 and perused the materials available on record.

5.As far as the negligence is concerned, I am satisfied with the finding given by the learned Tribunal and therefore, I am not inclined to interfere with the finding of the learned Judge in respect of negligence.

6.As far as the quantum of compensation is concerned, there is a specific statement given by the pillion rider, P.W.2, who is the friend of the deceased, who is stated to have worked together, the deceased has received a sum of Rs.6,000/- as monthly income. Though the certificate has been produced to show that the deceased

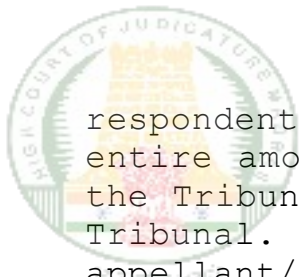


has been working as Supervisor in Om Namasivayam Transport and earned a sum of Rs.12,000/- as monthly income, the learned Judge had taken Rs.7,500/- as monthly income of the deceased. Though the certificate was produced to show that the deceased had earned Rs.12,000/- per month, the respondents/claimants have not proved the same. Therefore, the learned Judge ought to have accepted the evidence of PW2 and should have taken the monthly income as Rs.6,000/- instead of Rs.7,500/-. Therefore, I am inclined to modify the monthly income as Rs.6,000/- instead of Rs.7,500/-. At the time of accident, the deceased was aged 24 years. Therefore, as per judgment of the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others (Special Leave Petition(Civil)No.25590 of 2014 dated 31.10.2017)**, 40% of income is to be added. If 40% is added towards future prospects, the loss of income after deducting $1/3^{\text{th}}$ towards the personal expenses and applying 18 multiplier would be arrived at Rs.12,09,600/- (Rs.8400- $1/3 \times 12 \times 18$). In view of the above, the amount awarded by the Tribunal under the head of loss of income is reduced from Rs.15,12,000/- to Rs.12,09,600/- No amount has been given by the Tribunal under the head of loss of love and affection. Therefore, this Court fixes a sum of Rs.1,00,000/- under the head of loss of love and affection.

7.Except the award under the head of loss of income and loss of love and affection, the compensation under other heads are not interfered with. Accordingly, the award passed by the Tribunal is reduced from Rs.15,42,000/- to 13,53,600/-. So far as the interest is concerned, the rate of interest i.e., 7.5% p.a., fixed by the Tribunal is confirmed. Thus, the compensation is calculated as follows:

Monthly income + Future prospects	Rs.6000 +Rs.2400 = Rs. 8,400/-
Income - $1/3$ deduction for personal expenses	8400-2800 (8400 $\times 1/3$)= Rs. 5,600/-
Hence, loss of income arrived at	Rs.5600 $\times 18 \times 12$ = Rs.12,09,600/-
Loss of love and affection	Rs. 1,00,000/-
Loss of estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Total Compensation	Rs.13,53,600/-

8.In the result, the appellant is entitled to pay the award amount of Rs.13,53,600/- with 7.5% interest from the date of petition till the date of deposit. It is stated that the appellant has already deposited the entire award amount with interest and costs to the credit of the claim petition. Therefore, the



respondents 1 to 3 herein/claimants are directed to withdraw the entire amount with interest and costs in the ratio apportioned by the Tribunal, without filing formal permission petition before the Tribunal. The balance excess amount shall be withdrawn by the appellant/Insurance Company.

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9. With the above direction, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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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 Special District Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.

Copy to

The Section Officer-2 copies
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.JENIFA BIBIN, Advocate (SR-3832[F] dated 08/02/2021)

+1 CC to Mr.D.MALAICHAMY, Advocate (SR-4066[F] dated 09/02/2021)
CMA(MD)No.415 of 2019
and
C.M.P (MD) .No.4968 of 2019
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KM(25.05.2021) 4P 6C