



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .No.558 of 2019

The Branch Manager,
The Oriental Insurance Company Limited,
No.3607/21, 2nd Floor,
Sathiyamoorthi Road,
Pudukkottai.

...Appellant/2nd Respondent

Vs.

1.Gurunathan

...1st Respondent/Petitioner

2.K.Arumugam

3.T.Senbagavalli

...R-2 & R-3/R-1 & R-3

[2nd and 3rd respondents remained exparte before the Lower Court]

4.The Divisional Manager,

The United India Insurance Company Limited,
Gandhiji Road, LIC Building,
Thanjavur.

...R-4/R-4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and common Judgment passed in M.C.O.P.No.1159 of 2017, dated 31.01.2019, on the file of the learned Motor Accident Claims Tribunal cum I Additional District and Sessions Judge [PCR], Thanjavur, Special District Judge, M.C.O.P. Tribunal (Full Additional Charge).

For Appellant :Mr.A.Ilango

For R-1 :Mr.S.Bharathi

For R-4 :Mr.J.S.Murali

For R-2 & R-3 :No Appearance

ORDER

This Civil Miscellaneous Appeal has been filed by the appellant/insurance company to set aside the common order and decree, dated 31.01.2019 in M.C.O.P.No.1159 of 2017 passed by the learned Motor Accident Claims Tribunal cum I Additional District and Sessions Judge [PCR], Thanjavur, Special District Judge, M.C.O.P. Tribunal (Full Additional Charge).



2.It is a case of fatal accident, which took place on 10.04.2017, at 05.15 p.m., while the deceased Mahendran and some injured persons and the claimant/1st respondent herein were travelled in the Swaraj Mazda van, bearing Regn. No.TN-34-A-4569 belongs to the 3rd respondent's van. At that time, near Gandarvakkottai, from the opposite direction, the driver of the Tractor bearing Regn. No.TN-55-P-7635 belongs to the 2nd respondent herein drove the vehicle in a rash and negligent manner and dashed against the 3rd respondent's van. Due to the said accident, five passengers travelled in the van were died and some other were sustained injuries.

3.The claimant has filed a petition in M.C.O.P. No.1159 of 2017 on the file of the learned Motor Accident Claims Tribunal cum I Additional District and Sessions Judge [PCR], Thanjavur, Special District Judge, M.C.O.P. Tribunal (Full Additional Charge), seeking compensation.

4.Before the Tribunal, in the common order, on the side of the claimants four witnesses were examined as P.Ws.1 to 4 and marked thirty documents as Exs.P.1 to P.30 and R.W.1 was examined and Ex.R.1 was marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the insurance company and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the 2nd and 3rd respondent vehicle. The negligence of the accident on the part of the driver of the 2nd respondent herein is 90% and the remaining 10% negligence is fixed against the driver of the 3rd respondent. Hence, the appellant/insurance company is liable to pay 90% of compensation and the 4th respondent herein/insurance company is liable to pay 10% of compensation to the claimant. Aggrieved over the same, the appellant/insurance company has filed this present appeal.

6.Heard Mr.Mr.A.Ilango, learned counsel appearing for the appellant and Mr.S.Bharathi, learned counsel appearing for the 1st respondent and Mr.J.S.Murali, learned counsel appearing for 4th respondent.

7.The appellant/insurance company/R-2 has filed this Civil Miscellaneous Appeal. The claimant/1st respondent herein has filed a claim petition in M.C.O.P.No.1159 of 2017 for claiming compensation regarding permanent disability of 64%.

8.The tribunal has considered the claimant's monthly income as Rs.7,500/-with future prospectus 40% and awarded compensation of Rs.14,51,520/-as loss of income. The tribunal has correctly fixed the monthly income, since the age of the claimant is only 18 years



9.The tribunal has awarded a sum of Rs.2 lakhs, towards attender charges is very high. There is no document filed by the claimant to prove that some attender is attending with him. So, it is reduced to Rs.1 lakh.

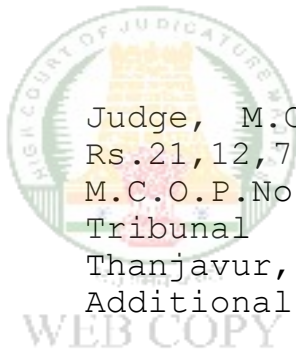
10.The tribunal has also granted a sum of Rs.1 lakh, towards loss of amenities. Towards loss of (marital pleasure) expectation of life is Rs.2 lakhs. For both the heads the Tribunal cannot award amount separately. So, loss of amenities is also deducted. There is no document was filed for future medical expenses. So, Rs.2 lakhs for medical expenses is also reduced Rs.1 lakh.

11.Accordingly, the claimant is entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	Towards loss of future income	Rs.14,51,520/-	Rs.14,51,520/-	confirmed
2.	Towards loss of income during the period of treatment [45 days]	Rs. 11,250/-	Rs.11,250/-	Confirmed
3.	Towards Transportation Charges	Rs. 25,000/-	Rs.25,000/-	Confirmed
4.	Towards Extra Nourishment charges	Rs. 25,000/-	Rs.25,000/-	Confirmed
5.	Towards attendar charges during treatment period.	Rs. 2,00,000/-	Rs.1,00,000/-	Modified
6.	Towards pain and suffering due to severe left thigh amputation	Rs.2,00,000/-	Rs.2,00,000/-	Confirmed
7.	Towards loss of (marital pleasure) expectation of life.	Rs. 2,00,000/-	Rs.2,00,000/-	Confirmed
8.	Towards future medical expenses (Artificial hand)	Rs. 2,00,000/-	Rs.1,00,000/-	Modified
Total		Rs.24,12,770/-	Rs.21,12,770/-	

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

12.In view of the said modification, this Civil Miscellaneous Appeal is partly allowed, and the award amount of Rs.24,12,770/- granted by the Motor Accident Claims Tribunal cum I Additional District and Sessions Judge [PCR], Thanjavur, Special District



Judge, M.C.O.P. Tribunal (Full Additional Charge), is reduced to Rs.21,12,770/-. For other aspects, the order, dated 31.01.2019 in M.C.O.P.No.1159 of 2017 passed by the learned Motor Accident Claims Tribunal cum I Additional District and Sessions Judge [PCR], Thanjavur, Special District Judge, M.C.O.P. Tribunal (Full Additional Charge), is confirmed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

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 Motor Accident Claims Tribunal cum
I Additional District and Sessions Judge [PCR],
Thanjavur.
Special District Judge/M.C.O.P. Tribunal (Full Additional Charge).

Copy to

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

+2 CC to M/s.S. BHARATHI, Advocate (SR-34930,34988[F] dated 18/11/2021)

+1 CC to M/s.A.ILANGO, Advocate (SR-34916[F] dated 18/11/2021)

+1 CC to M/s.J.S. MURALI, Advocate (SR-34903[F] dated 18/11/2021)

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RK(04/02/2022) 4P 8C