BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| Date of Reservation | 04.03.2021 |
| Date of Judgment | 09.06.2021 |

CORAM

**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A(MD)No.700 of 2018
and
CMP(MD)No.8127 of 2018
and
CMP(MD)No.3725 of 2019

The Branch Manager,
M/s.United India Insurance Company Limited,
No.164-C, Panchayat Union Road,
Valliyoorm-627 117,
Divisional Office at Promenede Road,
Cantonment, Trichy. : Appellant/2nd Respondent

Vs.

1.Devi
2.Kasthuri
3.Saratha : R1 to R3/Petitioners 1 to 3
4.Helan : 4th Respondent/1st Respondent

**PRAYER:-** Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Special District Court), Trichy, made in MCOP No.1871 of 2014, dated 30.10.2017.

For Appellant : Mr.N.Dilip Kumar

For R1 to R3 : Mr.T.Senthilkumar

For 4th Respondent : No appearance

**J U D G M E N T**

This Civil Miscellaneous Appeal is directed against the award passed by the Motor Accident Claims Tribunal (Special District Court), Trichy, made in MCOP No.1871 of 2014, dated 30.10.2017.

2.The short facts of the case is that on 07.11.2013 at about 5.30 am, the deceased Saravanan parked the 407 Van on Trichy to Madurai main road, near Idaiyapatti Piruvu Road and at that time, the Lorry TN-69-E-1390 came in a rash and negligent manner and dashed behind 407 Van. Due to the impact, the deceased, who was sitting the driver seat in the Van, sustained fatal injuries and died on the spot. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.15,00,000/- for the death of the deceased in the alleged accident.



3.The claimants have stated that the deceased was 26 years at the time of accident and he was working as a Driver, thereby he was earning Rs.500/- per day . It is alleged that the said Saravanan died only due to the negligence on the part of the driver of the Lorry.

4.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 6 documents. On the side of the Insurance Company, no witness was examined and no document was marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.11,36,000/- together with interest @ 7.5% p.a.

7.Heard both sides and perused the materials available on record.

8.The dispute is in respect of the negligence and quantum. The learned counsel appearing for the appellant/2nd respondent argued that the tribunal held that the driver of the insured Lorry is alone responsible for the accident, since the appellant Insurance company have not let in oral evidence or contra evidence to prove the manner of the accident and despite best possible efforts, the appellant insurer could not bring the insured driver for examination as a witness and hence, the tribunal should not have fixed the entire negligence upon the driver of the offending vehicle and on perusal of Exs.P1 and P2, it reveals that the deceased had rammed into the insured lory, while it had been parked on the left side of the road and the accident had happened only due to the rash and negligent driving of the deceased and the ramming of a 407 Van driven in high speed into the Lorry, which was parked on the left side of the road would by itself disclose that the deceased had been certainly negligent in driving the vehicle and had certainly contributed to the accident and further, there are contradictions in the evidence produced on the side of the claimants and hence, contributory negligence ought to have been fixed against the deceased and prays that the Civil Miscellaneous Appeal has to be allowed.

9.On the other hand, on the side of the the respondents 1 to 3/claimants argued that the deceased parked 407 Van on the extreme left of the road on Trichy to Madurai main road near Idaiyapatti pirivu road at Ramagoundanpatty, at that time, the driver of the offending vehicle drove it in a rash and negligent manner and dashed against the 407 Van and due to the sudden impact, the deceased, who was sitting in the driver seat sustained fatal injury and he died on the spot and the accident was happened due to the rash and negligent driving of the driver of the Lorry and in respect of the accident, the complaint was given by one Sivakumar, who was the driver of 407 Van.

10.On perusal of FIR, it is stated that the driver of the 407 Van parked the vehicle on the left side of the road without any signal and hence, the deceased dashed against the lorry and died on the spot. The driver of the 407 Van Sivakumar was examined as PW2. PW2 deposed that on 07.11.2013 at 5.30 am, while he went to take tea in his two wheeler and stopped his two wheeler near Ramagoundanpatty on Trichy to Madurai main road and at that time, the deceased tried to park his vehicle on the left side of the road with proper signal, at that time, the driver of lorry drove his vehicle in a rash and negligent manner and dashed against the 407 Van, which was attempted to be parked on the left side of the road.

11.PW2 during his chief examination stated that only due to the rash driving of the lorry driver, the accident happened. But during his cross examination, he stated while he was taking tea, at that time he heard the sound of dashing both the vehicles. Further, during his cross examination, he stated that in the 407 Van, there was damage in front of the above vehicle. As per the version of PW2, the accident occurred, when the driver of 407 Van tried to park his vehicle on the left side of the road and at that time, the driver of the lorry hit on the rear side of the 407 Van. Hence, it is not possible for the 407 Van to get damaged on its front side. Further, there are contradictions in FIR, the averments in the claim petition and evidence of PW2 in respect of the accident. Further, PW2 categorically stated that he heard the sound of both the vehicles dashed. Hence, it reveals that there was composite negligence on the part of the driver of the 407 Van I.e., the deceased. But the driver of the Lorry is a proper person to speak about the occurrence. Further, in respect of the accident, a criminal case was registered only as against the driver of the Lorry. It is to be noted here that the driver of the Lorry has not given any complaint to the police stating that only due to the negligence on the part of the deceased, the accident occurred. Further, he has not sent any petition to the superior police officials, objecting registration of the FIR against him. Hence, it is held that the accident occurred due to the composite negligence on the part of the driver of the Lorry and the driver of the 407 Van at the ratio of 70:30.

12.It is not in dispute that the deceased was working as a driver and he died at the age of 26 years. The tribunal has fixed the monthly income of the deceased at Rs.8,000/-. By applying multiplier '17' and after deducting 50% from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.8,16,000/- towards loss of income. Further, the tribunal has awarded Rs.3,00,000/- towards love and affection to the claimants; Rs.20,000/- towards funeral and transportation expenses. In total, the tribunal has awarded Rs.11,36,000/- to the claimants along with interest @ 7.5% p.a.

13.Perusal of the records would reveal that the deceased was a driver and it is stated in the claim petition that the deceased was getting Rs.500/- per day. But no proof was filed on the side of the claimants to that effect. Considering the above facts and keeping in view of the decision of the Hon'ble Apex Court in the case of **Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd., (2014(1) TN MAC 459 (SC)**, this court fixed the notional income of the deceased at Rs.6,500/- per month.

14.It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In the instant case, the tribunal has not added any amount towards future prospects. Hence, this court is of the considered view that 40% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493** ***(National Insurance Company Limited vs. Pranay Sethi and others)***. By doing so, the monthly loss of income of the deceased is calculated at Rs.9,100/- (Rs.6,500/- + 2,600/-). Since the deceased is a batchlor, 50% has to be deducted towards his personal and living expenses. By doing so, the monthly income is arrived at Rs.4,550/- (Rs.9,100/- x 1/2). By applying proper multipler 17, this court awards **Rs.9,28,200/-** (Rs.4,550/- x 12 x 17) towards loss of income. In addition to that, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards Rs.40,000/- towards filial consortium only to the 1st claimant who is the mother of the decased; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.9,98,200/-** together with interest @ 7.5% p.a. Since, this court holds that the deceased, who is the rider of the 407 Van is also contributed negligence and fixed the negligence at 30%, the claimants are entitled to only **Rs.6,98,740/-** together with interest at the rate of 7.5% p.a

15.In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal modified into Rs.6,98,740/- from Rs.11,36,000/-. The appellant Insurance Company is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the 1st claimant is entitled to withdraw Rs.5,48,740/- and the claimants 2 and 3 are each entitled to withdraw Rs.75,000/- with accrued interest and costs without filing any formal petition before the tribunal. The appellant Insurance Company is permitted to get back the excess amount, which was deposited before the tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

**er**

**<u>Note :</u>**

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 Accident Claims Tribunal/
Special District Judge, Trichy.

Copy to
The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. 2 Copies

+1 CC to M/s.N.DILIPKUMAR, Advocate ( SR-19135[F] dated 10/06/2021 )

Judgement made
in CMA(MD)No.700 of 2018

09.06.2021

CN(05.07.2021) 5P 5C