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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 31.08.2021

Delivered On : 04.10.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.941 of 2014

and

M.P.(MD)No.3 of 2014

Shriram General Insurance Co. Ltd.,
Arignar Anna Nagar,
Madurai 625 020.

... Appellant/Respondent-2

Vs.

1.Alima Beevi
2.Mohamed Meerasa
3.Mohideen Fath

... Respondents/Petitioners

4.Thangapandian
5.Sarada

... Respondents/Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 22.12.2011 made in M.C.O.P.No.318 of 2009, on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tenkasi.

For Appellant	: Mr.S.Srinivasa Raghavan
For Respondents 1 to 3	: Mr.R.J.Karthick
For Respondents 4 and 5	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.318 of 2009 dated 22.12.2011, on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tenkasi.

2.The appellant herein is the second respondent, the respondents 1 to 3 herein are the claimants and the respondents 4 and 5 herein are the respondents 1 and 2 in the claim petition. The respondents 1 to 3 herein have filed a claim petition in M.C.O.P.No.318 of 2009, claiming compensation for the death of Mohammed Kabeer, in an accident that took place on 10.07.2009. The Tribunal has awarded a sum of Rs.10,22,000/- (Rupees Ten Lakhs and Twenty Two Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.318 of 2009 is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



On 10.07.2009, at about 04.45 p.m., when the deceased was riding a two wheeler bearing registration No.TN-72-T-6088 in a careful and cautious manner, the first respondent drove the lorry bearing registration No.TN-67-F-2884 in a rash and negligent manner and dashed against the two wheeler from behind. The deceased sustained injuries and succumbed to death on the spot. The deceased was working in United Arab Emirates and was earning Rs.25,000/- (Rupees Twenty Five Thousand only) and he was aged about 25 years. The petitioners are his dependants and they claim a sum of Rs.25,00,000/- (Rupees Twenty Lakhs only) as compensation.

4.A brief substance of the counter filed by the second respondent therein is as follows:

The first respondent drove the vehicle in a careful and cautious manner. The manner of the accident as alleged in the petition is wrong. The income, age and occupation of the deceased has to be proved. The claim is excessive.

5.The brief substance of the counter filed by the third respondent therein is as follows:

The manner of the accident as narrated in the petition is wrong. It was the deceased who drove the two wheeler in a rash and negligent manner and suddenly crossed the road. The third respondent was not liable to pay compensation. The first respondent was not at all rash or negligent. The claimants are not dependants of the deceased. The first respondent was not having valid driving licence. The second respondent violated the policy conditions. The petition is bad for non joinder of necessary parties.

6.On the side of the petitioners, two witnesses were examined and ten documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.10,22,000/- (Rupees Ten Lakhs and Twenty Two Thousand only) as compensation to be paid by the appellant. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

7.On the side of the appellant, it is stated that the insured vehicle was not having permit. The Tribunal ought to have absolved the liability of the appellant from indemnifying the owner of the vehicle. The Tribunal ought to have taken into account the age of the mother of the deceased to fix the loss of income. Without following appropriate multiplier and without deduction for own expenses, the loss of income fixed by the Tribunal is wrong.

8.On the side of the appellant, it is stated that the insured vehicle was not at all involved in the accident. The deceased was a
<https://hse.cse.doots.gov.in/servefile> at the Tribunal has failed to deduct amount for own



expenses. The third claimant is the sister and the sister is not a dependant

9. On the side of the respondents 1 to 3, it is stated that **Shanthi Pathak's** case referred to by the appellant is overruled by the **Praney Sethi** case. As per the decision of the Hon'ble Supreme Court in **Praney Sethi** case, only the age of the deceased has to be considered for fixing loss of income. There was no violation of policy conditions. Only nominal income was fixed by the Tribunal and prayed the appeal to be dismissed.

10. Ex.P1, FIR and Ex.P6, chargesheet reveals that the insured vehicle was involved in the accident. The rough sketch and observation mahazer were marked as Ex.P4 and Ex.P5. There was no contra evidence from the owner of the vehicle or from the insurance company. The owner of the vehicle was not examined as a witness. Investigating Officer was not examined on the side of the insurance company. Hence, it is decided that the insured vehicle was involved in the accident and the insurance policy is valid.

11. The Tribunal has fixed the monthly income as Rs.4,500/- per month and the same is reasonable. But the Tribunal has failed to deduct amount for personal expenses. The deceased was unmarried and aged about 25 years at the time of accident. As per the decision of the Hon'ble Supreme Court in **Praney Sethi** case, the age of the deceased is to be taken into consideration. After deducting 50% towards his personal expenses and by applying multiplier '18', the loss of income is calculated as Rs.4,86,000/- (Rupees Four Lakhs and Eighty Six Thousand only). After adding 50% towards future prospects, the loss of income is calculated as Rs.7,29,000/- (Rupees Seven Lakhs and Twenty Nine Thousand only). A sum of Rs.70,000/- (Rupees Seventy Thousand only) is awarded towards conventional charges. In total, a sum of Rs.7,99,000/- (Rupees Seven Lakhs and Ninety Nine Thousand only) is awarded as compensation.

12. In the result, this Civil Miscellaneous Appeal is **partly allowed**. The respondents 1 to 3 herein are entitled to a sum of Rs.7,99,000/- (Rupees Seven Lakhs and Ninety Nine Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

13. The appellant is directed to deposit Rs.7,99,000/- (Rupees Seven Lakhs and Ninety Nine Thousand only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares as per the ratio of apportionment by the Tribunal with proportionate interest after deducting any amount received by them earlier. Excess amount, if any deposited shall be refunded to



the appellant. The claimants are not entitled for interest for the default period, if there is any. The appellant is directed to pay the extra court fee, if any. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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 Accidents Claims Tribunal,
Principal Sub Judge,
Tenkasi.

COPY TO:

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-31101[F]
dated 04/10/2021)

C.M.A. (MD) No. 941 of 2014

04.10.2021

KS (CO)

GC(28.10.2021) 4P 5C