



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17.02.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD) No.776 of 2016

WEB COPY

- 1.Kanmani
- 2.Ragupathy
- 3.Minor Sinthiya
- 4.Minor Vikram

(Appellants 3 and 4 are
Represented by their
Mother and Guardian the
1st Appellant Kanmani)

: Appellants/Claimants

Vs.

- 1.K.R.Hariharan
- 2.The Branch Manager,
Royal Sundaram Alliance Insurance Co., Ltd.,
No.46, Sundaram Towers,
Whites Road,
Royapettai,
Chennai.

: Respondents/Respondents

(R1 set- exparte before the tribunal.

Hence, notice may be given up against
R1)

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed in MCOP No.217 of 2012, dated 14.12.2015 by the Motor Accident Claims Tribunal (III Additional District and Sessions Court) Thanjavur at Pattukkottai.

For Appellants	: Mr.S.Deenadhayalan
For 1 st Respondent	: Ex-parte
For 2 nd Respondent	: Mr.M.Jerin Mathew

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the claimants against the award passed in MCOP No.217 of 2012, dated 14.12.2015 by the Motor Accident Claims Tribunal (III Additional District and Sessions Court), Thanjavur at Pattukkottai.

2.The brief facts of the case is that on 25.03.2012 at about 02.30 pm, the deceased Amaran was riding the motor cycle TN-01-AD-6130 along with one Siva and his mother as pillion riders and when they were proceeding near Kurichi Poovalur branch Pannavayal, the Maruthi Car TN-55-V-6647 came in a rash and negligent manner and hit against the two wheeler. In that process, the rider of the motor cycle thrown away from the motor cycle and sustained grievous injuries all over the body, while the pillion riders sustained



injuries. Immediately, they were taken to Pattukottai Government Hospital and then, they were referred to Thanjavur Medical College Hospital, where the Amaran died in-spite of treatment. The legal heirs of the deceased Amaran filed a claim petition seeking compensation of Rs.20,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

3.The claimants have stated that the deceased was 22 years at the time of accident and he was doing Mason work and thereby he earning Rs.12,000/- per month. It is alleged that the said Amaran died only due to the negligence on the part of the driver of the offending vehicle.

4.In the counter filed by the 2nd Respondent Insurance Company, they disputed the manner of accident and their liability to pay compensation.

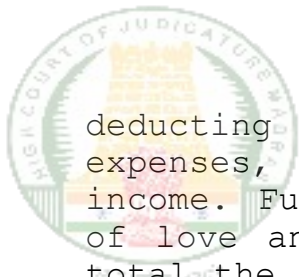
5.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 8 documents. On the side of the 2nd respondent Insurance Company, 1 witness was examined and no document was marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that both the deceased as well as the the driver of the offending vehicle responsible for the accident and fixed the negligence at the ratio of 50:50 and awarded compensation of Rs.2,60,000/- together with interest @ 7.5% p.a, to the 1st claimant alone and dismissed the claim petition in respect of the claimants 2 to 4 holding that they are not the dependants of the deceased Amaran.

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

8.The learned counsel appearing for the appellants/claimants argued that the tribunal has erroneously fixed 50% contributory negligence on the part of the deceased without any basis and the tribunal awarded very meagre amount of compensation for the death of the 1st appellant's son and the tribunal has not applied proper multiplier for calculating the loss of income of the deceased and that the tribunal has failed to appreciate the fact that the dependants and claimants are 4 in number, hence, strict interpretation with regard to beneficial legislation would adversely affect the rights of the claimants and prays that the Civil Miscellaneous Appeal has to be allowed. On the other hand, the learned counsel appearing for the 2nd respondent Insurance Company argued in support of the findings given by the tribunal.

9.It is not in dispute that at the time of accident, the deceased Amaran was doing Mason work and he was a bachelor. It is also not in dispute that the deceased died at the age of 22 years. Since no reliable document has been produced to prove the income of the deceased, the tribunal has rightly fixed the monthly income of the deceased at Rs.6,000/-. By applying multiplier '14' and after



deducting 50% from the salary of the deceased for his personal expenses, the tribunal has awarded Rs.5,04,000/- towards loss of income. Further, the tribunal has awarded Rs.10,000/- towards loss of love and affection and Rs.6,000/- towards funeral expenses. In total the tribunal has awarded Rs.5,20,000/- together with interest at the rate of 7.5% p.a. As the deceased also contributed 50% negligence, the tribunal has awarded Rs.2,60,000/- to the 1st claimant alone, being the mother of the deceased and dismissed the claim petition in respect of the claimants 2 to 4 as they are not the dependants of the deceased.

10. In this case, the dispute is with regard to negligence. On careful perusal of records, it reveals that the accident took place due to the composite negligence on the part of the drivers of both the vehicles. Even though, both the rider of the two wheeler and the driver of the offending vehicle responsible for the accident, considering the facts and circumstances of this case, this court fixed the negligence at 70% on the part of the driver of the offending vehicle and 30% on the part of the deceased, who is the rider of the two wheeler.

11. It is to be noted that the learned counsel appearing for the 2nd respondent Insurance Company has not disputed the quantum award by the tribunal and he has challenged this appeal on the basis of the negligence. Hence, this court fixed the negligence at the ratio of 70% on the side of the driver of the offending vehicle and 30% on the part of the deceased. Accordingly, the 2nd respondent Insurance Company is liable to pay their share of compensation at Rs. 3,64,000/- together with interest at the rate of 7.5% p.a from the date of petition till the date of realization.

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The negligence is fixed at 70% on the part of the driver of the offending vehicle and 30% on the part of the deceased. The 2nd Respondent Insurance Company is directed to deposit their apportionment of negligence amount fixed by this court before the tribunal together with interest at the rate of 7.5% p.a. from the date of petition, till the date of deposit. On such deposit, the 1st appellant/1st claimant is entitled to withdraw the entire amount without filing any formal petition before the tribunal. The appellants/claimants shall pay the additional court fee for the enhanced amount. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

The Motor Accident Claims Tribunal/
III Additional District and Sessions Court,
Thanjavur @ Pattukkottai.

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Copy to:

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

+1 CC to M/s.M.E.ILANGO, Advocate (SR-5729[F] dated 17/02/2021)

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-6000[F] dated 18/02/2021)

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KK(28.06.2021) 4P 6C