



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2021

CORAM:

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.782 of 2019
and
CMP(MD)No.10123 of 2019

New India Assurance Private Limited,
Divisional Office,
Pillors Gate, Anna Stadium,
Nagercoil, Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

... Appellant/3rd Respondent

vs.

1) Bhuvaneshwari

2) A. Srivarshia

... 1st & 2nd Respondents/Petitioners

3) Darlin Jegan

... 3rd Respondent/1st Respondent

4) T. Edhazh Perumal

... 4th Respondent/2nd Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree in MCOP.No.6 of 2018 dated 07.06.2019 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil.

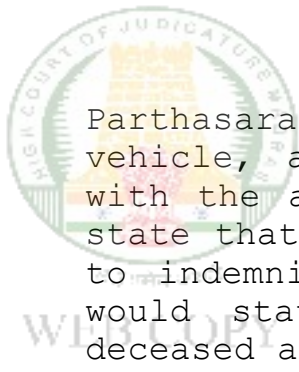
For Appellant : Mr.J.S.Murali

For R1 & R2 : Mr.R.Murugan

JUDGMENT

The present appeal has been filed by the insurance company questioning the liability and quantum.

2.As far as liability is concerned, the learned counsel for the appellant would state that the Tribunal has miserably failed to consider that the 3rd respondent who was the driver of the offending vehicle did not possess any driving licence and the police in connivance with the 4th respondent/owner of the vehicle and the respondents 1 and 2/claimants have charge sheeted one



Parthasarathi who is none other than the son of the owner of the vehicle, as if he was riding the offending motor cycle insured with the appellant, at the time of accident and therefore, would state that the appellant insurance company has no legal obligation to indemnify the owner of the vehicle. As regards quantum, he would state that notional fixation of monthly income of the deceased at Rs.15,000/- is on the higher side.

3. Heard the learned counsel for the appellant as well as the respondents 1 and 2.

4. Perusal of record shows that considering the evidence of RW1-Officer of the appellant company and the counter affidavit filed by the 3rd respondent, the Tribunal held that one Parthasarathi, who is the son of the owner of the vehicle/4th respondent, drove the offending vehicle in a rash and negligent manner and caused the accident. No evidence was let in on the side of the 4th respondent/owner to prove that his son Parthasarathi did not drive the offending vehicle at the time of accident and therefore, I do not find any infirmity in the finding of the Tribunal regarding negligence.

5. As far as quantum is concerned, the claimants claimed that at the time of accident, the deceased was aged 54 years and by running STD Booth, Inverter, Battery Work and Xerox Centre at Paraseri Junction, he earned Rs.50,000/- per month and in the absence of proof for income, the Tribunal fixed the notional income at Rs.15,000/- per month. After adding 10% towards future prospects, deducting 1/3rd of income towards the personal expenses of the deceased and applying 11 multiplier, the Tribunal has awarded a sum of Rs.14,52,000/- towards loss of income. Apart from the above, the Tribunal awarded Rs.70,000/- towards conventional heads as per the judgment in National Insurance Company vs. Pranay Sethi, reported in 2017 (2) TNMAC (SC) 609. Altogether, the Tribunal awarded compensation of Rs.15,22,000/- with 7.5% interest per annum from the date of petition till the date of deposit. In my opinion, the total award of Rs.15,22,000/- cannot be said to be excessive and therefore, I am not inclined to interfere with the award.

6. The appellant is directed to deposit the entire award amount with interest and costs, as awarded by the Tribunal, less the amount already deposited, if any, to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants are permitted to withdraw the same in the share apportioned by the Tribunal, without filing formal permission petition before the Tribunal.



7. With the above direction, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// 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 Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Nagercoil.

Copy to

The Record Keeper, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.R.MURUGAN, Advocate (SR-5813[F] dated 18/02/2021)

+1 CC to MR.J.S.MURALI, Advocate (SR-5855[F] dated 18/02/2021)

JUDGMENT MADE IN
CMA(MD)No.782 of 2019
DATED : 17.02.2021

KM (25.03.2021) 3P 6C