



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A. No.1228 of 2022
and C.M.P.No.8837 of 2022

1. United India Insurance Co. Ltd.,
Office Working at No.36/11,
First Floor, Ragavan Complex,
Vellala Street, Ariyalur Taluk,
Ariyalur District.
2. United India Insurance Co. Ltd.,
Office Working at First Floor, TVR Corner,
Upstairs of Canara Bank Old Bus Stand,
Perundurai Taluk,
Erode District.

.. Appellants/Respondents 3&4

Vs.

- 1.Ramathal
- 2.Minor Sabarish
(Minor rep. By his next friend, mother, Ramathal)
- 3.Murugesan .. Respondents 1 to 3/Petitioners
- 4.S.Rajavendhan
- 5.P.Sengamalam .. Respondents 4&5/
Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.01.2022, made in M.C.O.P. No.55 of 2019, on the file of the Sub Court, (Motor Accident Claims Tribunal), Perundurai.

For Appellant : Mr.C.Paranthaman

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

This Civil Miscellaneous Appeal has been filed by the appellants against the judgment and decree dated 11.01.2022, made in M.C.O.P. No.55 of 2019, on the file of the Sub Court,



(Motor Accident Claims Tribunal), Perundurai.

2.The appellants are the respondents 3 and 4 in M.C.O.P. No.55 of 2019, on the file of the Sub Court, (Motor Accident Claims Tribunal), Perundurai. The respondents 1 to 3/claimants filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Selvakumar who died in the accident that took place on 11.03.2018.

3.According to the respondents 1 to 3, on the date of accident, when the deceased Selvakumar was travelling as a pillion rider in a Motorcycle bearing Registration No.TN-47-AC-3631, along Karur to Kovai NH 81 main road, on the left side of the T.Nallipalayam Pirivu road, from east-west direction, the 4th respondent, driver of a Maxi Cab Van bearing Registration No.TN 48 P 5546, owned by 5th respondent, who came from opposite direction in a rash and negligent manner, dashed on the Motorcycle in which the deceased was travelling and caused the accident. In the accident, the deceased sustained multiple grievous injuries and died on the way to Hospital. The accident occurred only due to the rash and negligent driving by 4th respondent, driver of the Maxi Cab Van and hence, respondents 1 to 3 filed claim petition against the respondents 4 & 5, as driver and owner of the Maxi Cab Van and 1st appellant, as insurer of the said vehicle and 2nd appellant as branch office of the 1st appellant.

4.The respondents 4 and 5 filed counter statement and denied all the averments made by the respondents 1 to 3 in the claim petition. According to the respondents 4 and 5, the accident occurred only due to the rash and negligent riding of Motorcycle by one Samuel, in which the deceased traveled as a pillion rider. The Police records and other records reveal that the rider of the Motorcycle contributed more than 75% to the accident. The respondents 1 to 3 have to prove the age, avocation and income of the deceased to claim compensation. In any event, the Maxi Cab Van owned by the 5th respondent is insured with the 1st appellant and hence, the respondents 1 to 3 are liable to claim compensation from the appellants and prayed for dismissal of the claim petition.

5.The appellants-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 3 in the claim petition. According to the appellants, the rider of the Motorcycle in which the deceased traveled as a pillion rider rode the vehicle from East to West direction in an uncontrollable speed and dashed on the Maxi Cab Van which was driven carefully observing all traffic rules from West to East direction. At the time of accident, the rider of the Motorcycle did not possess valid driving license and contributed to the



accident. The 4th respondent, driver of the Maxi Cab Van also did not possess valid driving license to drive the vehicle and hence, the appellants are not liable to pay compensation to the respondents 1 to 3. The claim petition is bad for non-joinder of necessary parties viz., the rider, owner and insurer of the Motorcycle in which the deceased traveled as a pillion rider. In any event, the total compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Maruthupandian, eye-witness to the accident was examined as P.W.2 and 13 documents were marked as Exs.P1 to P13. A xerox copy of Aadhar card of P.W.2 was marked as Ex.X1. The appellants did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 4th respondent, driver of the Maxi Cab Van, owned by the 5th respondent and directed the appellants as insurer of the said vehicle to pay a sum of Rs.24,31,600/- as compensation to the respondents 1 to 3.

8.Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 11.01.2022, made in M.C.O.P. No.55 of 2019, the appellants - Insurance Company have come out with the present appeal.

9.Heard the learned counsel appearing for the appellants-Insurance Company and perused the materials available on record.

10.Though the appellants-Insurance Company raised various grounds with regard to negligence, at the time of arguments, the learned counsel appearing for the appellants restricted his arguments only with regard to quantum of compensation awarded by the Tribunal. The learned counsel appearing for the appellants submitted that as there is no evidence to allege the negligence on the part of the deceased, the appellants are challenging the award only with regard to notional income of the deceased fixed by the Tribunal. The respondents 1 to 3 have claimed that the deceased was working as a Painting Contractor and was earning a sum of Rs.25,000/- per month. However, they did not file any document to prove the same. In the absence of any evidence with regard to avocation and income of the deceased, the Tribunal, taking into consideration the judgment of the Division Bench of this Court reported in 2019 (1) TNMAC 54 (DB) [Aandal and two others Vs. Avinav Kannan and another], fixed a sum of Rs.13,700/- per month as notional income of the deceased. The accident is of the year 2018. Considering the year of accident



and nature of work done by the deceased, the notional income fixed by the Tribunal is meagre. This Court is of the considered view that the amounts granted by the Tribunal under different heads are not excessive, warranting interference by this Court.

WEB COPY

11. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.24,31,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellants-Insurance Company are directed to deposit the award amount along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.55 of 2019. On such deposit, the respondents 1 and 3 are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st respondent, mother of the minor 2nd respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Perundurai.

+1cc to Mr.C.Paranthaman, Advocate, S.R.No.33789

C.M.A. No.1228 of 2022

VBM(CO)
CT/05/07/2022