



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2839 of 2014
and M.P.No.1 of 2014

The Branch Manager,
M/s.United India Insurance Company Limited,
342-A, Post Office Street,
N.H.Road, Avinashi. .. Appellant/2nd Respondent

Vs.

1.Maragadham
2.Saravanan
3.Gowsalya
4.Sivakumar .. Respondents 1 to 3 /1 to 3 Petitioners /
4th Respondent/1st Respondent

(R4 set exparte before MACT. Notice
may be dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.02.2012 made in M.C.O.P.No.1318 of 2010, on the file of the V Fast Track Court, Additional District Judge, (Motor Accidents Claims Tribunal), Coimbatore at Tiruppur.

For Appellant : Ms.I.Malar

For Respondents : Mr.M.Lokesh (For R1 to R3)
for M/s.Ma.P.Thangavel
R4 Exparte

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company to set aside the judgment and decree dated 29.02.2012 made in M.C.O.P.No.1318 of 2010, on the file of the V Fast Track Court, Additional District Judge, (Motor Accidents Claims Tribunal), Coimbatore at Tiruppur.

2.The appellant is the 2nd respondent in M.C.O.P.No.1318 of 2010, on the file of the V Fast Track Court, Additional



WEB COPY

District Judge, (Motor Accidents Claims Tribunal), Coimbatore at Tiruppur. The respondents 1 to 3/claimants filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one M.Dhandapani, who died in the accident that took place on 12.06.2010.

3.According to the respondents 1 to 3, on the date of accident, when the deceased M.Dhandapani was riding a Two Wheeler bearing Registration No.TN-40-W-8696 in the Rayampalayam near Thanneerpandal, Avinashi, the rider of the Motorcycle bearing Registration No.TN-39-M-9753 owned by the 4th respondent drove the same from opposite direction in a rash and negligent manner, without adhering the traffic regulations and dashed against the deceased and caused the accident. In the accident, the deceased sustained fatal injuries. The accident occurred only due to rash and negligent riding of Motorcycle owned by the 4th respondent. Hence, the respondents 1 to 3 filed the claim petition claiming compensation against the 4th respondent as owner and appellant as insurer of the offending vehicle respectively.

4.The 4th respondent, owner of the Motorcycle, remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 3 in the claim petition. According to the appellant, the accident did not occur due to negligent riding of Motorcycle owned by the 4th respondent. The appellant contended that at the time of accident, the Motorcycle owned by the 4th respondent was not insured with the appellant and the rider of the Motorcycle did not possess valid driving license or endorsement to ride the said vehicle. Hence, the appellant is not liable to indemnify the 4th respondent and pay compensation to the respondents 1 to 3 and prayed for dismissal of the claim petition against the appellant.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, examined one Ramamoorthy and Palanisami as P.W.2 and P.W.3 respectively and marked 7 documents as Exs.P1 to P7. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding of Motorcycle owned by the 4th respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.14,86,000/- as compensation to the respondents 1 to 3.



8. Against the said award dated 29.02.2012 made in M.C.O.P.No.1318 of 2010, the appellant - Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in holding that the accident occurred only due to rash and negligent riding by rider of the Motorcycle owned by the 4th respondent. The Tribunal ought to have considered the fact that the deceased who was riding a Two Wheeler at the time of accident also contributed negligence to the accident. The Tribunal without considering the failure on the part of the respondents 1 to 3 to prove the agricultural income earned by the deceased, erred in fixing a sum of Rs.15,000/- per month as notional income. The deceased was aged 57 years at the time of accident, as per Exs.P3 and P4. The Tribunal erroneously fixed the age of the deceased as 52 years, instead of 57 years and wrongly applied the multiplier '11'. The correct multiplier applicable is '8'. In any event, the Tribunal ought not to have fixed the entire negligence on the part of the rider of the Motorcycle owned by the 4th respondent and liability on the appellant and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the Tribunal considering all the materials on record in proper perspective, rightly held that the accident occurred only due to rash and negligent riding by rider of the Motorcycle owned by the 4th respondent. The Tribunal considered the documents filed by the respondents 1 to 3 to prove the avocation and income of the deceased and fixed a sum of Rs.15,000/- per month as notional income, which is not excessive. The deceased was aged 57 years at the time of accident. The Tribunal did not grant any enhancement towards future prospects of the deceased, while awarding compensation towards loss of dependency. In any event, the total compensation awarded by the Tribunal is meagre and prayed for dismissal of the Civil Miscellaneous Appeal.

11. The 4th respondent, owner of the Motorcycle, remained exparte before the Tribunal and notice to the 4th respondent is dispensed with.

12. Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 3 and perused the materials available on record.

13. From the materials on record, it is seen that it is



the case of the respondents 1 to 3 that on the date of accident, when the deceased was riding a Two Wheeler in the Rayampalayam near Thanneerpandal, Avinashi, the rider of the Motorcycle owned by the 4th respondent drove the same from opposite direction, in a rash and negligent manner and dashed against the deceased and caused the accident. To substantiate the same, the 1st respondent examined herself as P.W.1 and examined one Ramamoorthy as P.W.2, whose evidence corroborated with the evidence of P.W.1. The 1st respondent, as P.W.1, deposed that the accident occurred only due to rash and negligent riding by rider of the Motorcycle owned by the 4th respondent. It is the case of the appellant that accident did not occur due to the negligence of the rider of the Motorcycle. It is the further case of the appellant that the rider of the Motorcycle owned by the 4th respondent did not possess driving license to ride the Motorcycle at the time of accident. The appellant did not examine any eye-witness to prove their case and to disprove the evidence of P.W.1. The Tribunal considering the FIR registered against the rider of the Motorcycle owned by the 4th respondent, which is marked as Ex.P1 and evidence of P.W.1 and P.W.2, in the absence of any oral or documentary evidence on the part of the appellant as well as the 4th respondent, held that the accident occurred only due to rash and negligent riding by rider of Motorcycle owned by the 4th respondent. There is no error in fixing the negligence on the rider of the Motorcycle and liability on the appellant, as insurer of the Motorcycle.

14.As far as the quantum of compensation is concerned, the respondents 1 to 3 claimed that the deceased was doing Milk vending business as well as agricultural work and was earning a sum of Rs.2,00,000/- per annum and produced Ex.P5 to show that the deceased was supplying milk to Hudson Agro Product Limited, Salem and Exs.P6 and P7, the certificate issued by Village Administrative Officer. The respondents 1 to 3 have not denied the contention of the learned counsel appearing for the appellant-Insurance Company that they are cultivating the land and are getting agricultural income after death of the deceased. The Tribunal, relying on Exs.P5 and P6, held that the deceased was doing Milk Vending business and was cultivating the land and he would have earned Rs.4,000/- through milk vending business and Rs.11,000/- through agricultural income and fixed a sum of Rs.15,000/- as monthly income of the deceased. The said reasoning of the Tribunal is erroneous. The Village Administrative Officer is not an authority to issue certificate with regard to income. The respondents 1 to 3 have not denied that they are cultivating the land and getting income. Hence, the monthly income fixed by the Tribunal at Rs.15,000/- is



excessive. The accident is of the year 2010. Considering the year of accident and nature of work done by the deceased, a sum of Rs.10,000/- is fixed as his monthly income. The Tribunal fixed the age of the deceased as 52 years, relying on the post mortem report, which is marked as Ex.P2. On a perusal of Ex.P2, it is seen that the deceased was aged 57 years at the time of accident. The Tribunal, erroneously fixed the age of the deceased at 52 years. The same is set aside and the age of the deceased is fixed as 57 years. The Tribunal failed to grant any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the respondents 1 to 3 are entitled to 10% enhancement towards future prospects. The Tribunal applied the multiplier '11'. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court [Sarala Verma & others vs. Delhi Transport Corporation & another], the correct multiplier applicable is '9'. There are three dependents of the deceased. Hence, by fixing the monthly income at Rs.10,000/-, granting 10% enhancement towards future prospects, applying multiplier '9' and after deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased, the amounts granted by the Tribunal towards loss of dependency is modified to Rs.7,92,000/- {[Rs.10,000/- + Rs.1,000/- (10% of Rs.10,000/-)] x 12 x 9 x $\frac{2}{3}$ }. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	13,20,000/-	7,92,000/-	Reduced
2.	Loss of love and affection	1,20,000/-	1,20,000/-	Confirmed
3.	Loss of consortium to 1 st respondent	40,000/-	40,000/-	Confirmed
4.	Funeral expenses	6,000/-	6,000/-	Confirmed
	Total	14,86,000/-	9,58,000/-	Reduced by Rs.5,28,000/-

15. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.14,86,000/- is modified to



Rs.9,58,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs 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.1318 of 2010. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount available in the deposit to the credit of M.C.O.P. No.1318 of 2010, if the entire amount determined by the Tribunal has been already deposited by them. It is made clear that if the respondents 1 to 3 have already withdrawn the entire award amount, the appellant/Insurance Company is not entitled to recover the same from the respondents 1 to 3. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Additional District Judge,
V Fast Track Court,
(Motor Accidents Claims Tribunal),
Coimbatore at Tiruppur.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.I.Malar, Advocate SR.No.1824
+1cc to Mr.P.Thangavel, Advocate SR.No.1536

C.M.A.No.2839 of 2014

GMR(CO)
GN(16/02/2022)