IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MRS.JUSTICE T.V.THAMILSELVI**

C.M.A. No.3095 of 2021
and C.M.P.No.17508 of 2021

The New India Assurance Co. Ltd.,
Rep. By its Branch Manager,
3rd Party Claim, HUB, Commercial Complex,
CSI Buildings, 2nd Floor,
Officer's Line, Vellore. .. Appellant

Vs.

1.Geetha

2.Vasanth

3.Minor Revathi
(Minor rep. By next friend/mother, 1st respondent)

4.R.Padma .. Respondents

(R4 was set exparte before the Tribunal.
Hence, notice is dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2020, made in M.C.O.P. No.210 of 2017, on the file of the Sub Court, (Motor Accident Claims Tribunal), Vaniyambadi.

For Appellant	: Mr.R.Sivakumar
For RR1 to 3	: No appearance

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 appellant-Insurance Company to set aside the judgment and decree dated 22.07.2020, made in M.C.O.P. No.210 of 2017, on the file of the Sub Court, (Motor Accident Claims Tribunal), Vaniyambadi.

2.The appellant is the 2nd respondent in M.C.O.P. No.210 of 2017, on the file of the Sub Court, (Motor Accident Claims Tribunal), Vaniyambadi. The respondents 1 to 3/claimants filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Arun who died in the accident that took place on 02.09.2017.

3.According to the respondents 1 to 3, on the date of accident, when the deceased Arun was riding on the left side of the Vaniyambadi - Ambur road in a TVS XL bearing Registration No.TN-01-V-1049 slowly and cautiously to do his wall poster pasting work, opposite to Balaji Road lines Co., Valayampattu HDFC Bank, the driver of the Bus bearing Registration No.TN-23-AE-3344 owned by the 4th respondent drove the same from opposite direction in a rash and negligent manner, lost control and dashed against the TVS XL driven by the deceased and caused the accident. In the accident, the said Arun sustained fatal injuries and died in the Hospital. The accident occurred only due to rash and negligent driving by driver of the Bus owned by the 4th respondent and hence, the respondents 1 to 3 filed the said claim petition claiming compensation against the 4th respondent and appellant-Insurance Company as owner and insurer of the Bus respectively.

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

5.The appellant, insurer of the Bus, filed counter statement and denied all the averments made by the respondents 1 to 3 in the claim petition. According to the appellant-Insurance Company, on the date of accident, the driver of the Bus was driving the vehicle slowly and cautiously following the traffic rules. The deceased Arun who was riding the TVS XL in a rash and negligent manner, suddenly crossed the road to paste posters and invited the accident. The accident occurred only due to the negligent riding of TVS XL by the deceased Arun. Hence, the appellant, as insurer of the Bus is not liable to indemnify the 4th respondent, owner of the Bus. At the time of accident, the deceased Arun did not possess valid driving license to ply the vehicle. In any event, the respondents 1 to 3 have to prove the age, avocation and income of the deceased Arun to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Iyyappan, eye-witness to the accident was examined as P.W.2 and 16 documents were marked as Exs.P1 to P16. The appellant examined one Vijayakanth, Official from RTO, Vaniyambadi as R.W.1, but did not mark any document. One third party document was marked as Ex.X1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Bus owned by the 4th respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.25,71,000/- as compensation to the respondents 1 to 3.

8.Against the said award of the Tribunal dated 22.07.2020, made in M.C.O.P. No.210 of 2017, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to rash and negligent riding of TVS XL by the deceased Arun. The Tribunal erroneously held that the accident occurred due to negligence of the driver of the Bus. The appellant examined R.W.1 – an Official from R.T.O and produced Ex.X1 – letter from RTO to show that the deceased Arun was not possessing valid driving license to ply the vehicle at the time of accident. The Tribunal, considering the same, ought to have fixed 20% contributory negligence on the part of the deceased as per the judgment of this Court reported in ***2018 (2) TNMAC 168 DB [National Insurance Co. Ltd., Vs. Thangadurai and others].*** At the time of accident, the deceased was a Dhobi and also doing Wall Poster Pasting work and was not having any permanent employment. The Tribunal erred in fixing the notional income of the deceased at Rs.6,500/- per month and taking into consideration the cost of inflation index for the year 2017-2018, determined the notional income at Rs.13,705/- (Rs.6,500/- x 272/129). The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.Though notice has been served on the respondents 1 to 3 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

11.Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials available on record.

12.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 Arun was riding on the left side of the Vaniyambadi - Ambur road in a TVS XL slowly and cautiously to do his wall poster pasting work, opposite to Balaji Road lines Co., Valayampattu HDFC Bank, the driver of the Bus owned by the 4th respondent drove the same from opposite direction in a rash and negligent manner, lost control and dashed against the TVS XL driven by the deceased and caused the accident. To substantiate their case, the 1st respondent examined herself as P.W.1, examined eye-witness to the accident as P.W.2 and marked the FIR as Ex.P1. Deposition of P.W.2 corroborated with the contents of FIR. On the other hand, it is the case of the appellant-Insurance Company that the accident occurred only due to the negligent act of the deceased Arun who rode the TVS XL in a rash and negligent manner, crossed the road suddenly to paste the posters and invited accident. To substantiate their case, they have not examined the driver of the Bus or any other eye-witness to disprove the evidence of P.W.2. In the absence of any contra evidence to the evidences of 1st respondent as P.W.1, P.W.2 – eye witness to the accident, the Tribunal considering the evidences of P.W.1 and P.W.2, Ex.P1 – FIR, held that the accident occurred only due to rash and negligent driving by driver of the Bus owned by the 4th respondent. The appellant-Insurance Company has examined only an Official from the R.T.O. as R.W.1 and marked one document as Ex.X1 – a letter from RTO to show that the deceased Arun was not possessing any valid driving license to ply the vehicle at the time of accident. The Tribunal considering the fact that there is no negligence fixed on the part of the deceased Arun, rightly rejected the evidence of R.W.1 and Ex.X1 to hold whether the deceased Arun possessed valid driving license or not. In view of the above, the judgment relied on by the learned counsel for the appellant do not advance their case. There is no error in the said finding of the Tribunal warranting interference by this Court.

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, the deceased Arun was aged 35 years, working as a Dhobi and was earning a sum of Rs.15,000/- per month. The respondents 1 to 3 did not file any document to prove the avocation and income of the deceased. In the absence of any documentary evidence, the Tribunal relying on the judgment of the Hon'ble Apex Court reported in ***2019 (1) TNMAC 54 (DB) [Andal Vs. Avina Kannan]***, taking into consideration the cost of inflation index for the year 2017 – 2018, fixed a sum of Rs.13,705/- per month as notional income of the deceased. The notional income fixed by the Tribunal is excessive. The accident is of the year 2017. Considering the nature of work done by the deceased and the accident of the year 2017, the notional income fixed by the Tribunal is modified and fixed at Rs.12,000/- per month. As per Ex.P2, Postmortem Certificate, the deceased Arun was aged 35 years at the time of accident. The Tribunal following the judgments of the Hon'ble Apex Court reported in ***2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]*** and ***2009 (2) TNMAC 1 SC Supreme Court [Sarla Verma & others vs. Delhi Transport Corporation & another],*** rightly granted 40% enhancement towards future prospects, deducted 1/3rd towards personal expenses of the deceased and applied the multiplier '16'. Hence, fixing the monthly income at Rs.12,000/-, granting 40% enhancement towards future prospects, deducting 40% towards personal expenses of the deceased and applying the multiplier '16', the amounts awarded by the Tribunal towards loss of dependency is modified to Rs.21,50,400/- {[Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] x 12 x 16 x 2/3}. The Tribunal has excessively granted a sum of Rs.50,000/- towards loss of consortium to the 1st respondent. The 1st respondent, wife of the deceased Arun is entitled to only Rs.40,000/- towards loss consortium. Hence, the amount of Rs.50,000/- granted by the Tribunal towards loss of consortium is modified to Rs.40,000/-. The sum of Rs.50,000/- granted by the Tribunal towards loss of love and affection to the respondents 2 and 3 who are the children of the deceased are meagre. The same is modified and a sum of Rs.40,000/- each is granted towards loss of parental consortium to the respondents 2 and 3. The Tribunal failed to award any amount towards loss of estate. Hence, a sum of Rs.15,000/- is awarded towards loss of estate to the respondents 1 to 3. The amount awarded by the Tribunal towards funeral expenses is just and reasonable and hence, the same is 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	24,56,000/-	21,50,400/-	Reduced
2.	Loss of estate	-	15,000/-	Granted
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of filial consortium	50,000/-	80,000/-	Enhanced
5.	Loss of consortium	50,000/-	40,000/-	Reduced
	Total	**25,71,000/-**	**23,00,400/-**	**Reduced by Rs.2,70,600/-**

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.25,71,000/- is modified and reduced to Rs.23,00,400/- together with interest at the rate of 6% 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 eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.210 of 2017. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount now determined by this Court, 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 3rd 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 3rd respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 3rd respondent. The appellant-Insurance Company is permitted to withdraw the excess amount, lying in the credit of M.C.O.P. No.210 of 2017, if the entire award amount has already been 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. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (T.V.T.S, J)
22.09.2022

Index : Yes/No
Speaking Order : Yes/No

(gsa)

To

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

2.The Section Officer,
V.R Section,
High Court, Madras.

V.M.VELUMANI, J.
and
T.V.THAMILSELVI,J.

(gsa)

C.M.A. No.3095 of 2021

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