IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.44 of 2022
&
C.M.P.No.292 of 2022

National Insurance Company Ltd.,
Branch – 2,
312, Jawaharlal Nehru Street,
Pondicherry. ...Appellant

Vs

1.Aaravalli

2.Minor. Sandhiya

3.Minor. Siddharth

4.Lakshmi (Deceased)

5.Muthalravarthanan

6.Kaliyaperumal

7.National Insurance Company Ltd.,
Branch - 1, 62A, Jawaharlal Nehru Street,
Pondicherry. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and Decree dated 23.04.2021 passed in M.A.C.T.O.P.No.77 of 2016 by the Motor Accidents Claims Tribunal, Special District Judge, Villupuram.

For Appellant	:	Mrs.R.Rathna Thara
For Respondents: 1 to 3		Mr.C.Munusamy
For Respondents 4 to 6	:	No Appearance.

JUDGEMENT

The Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal, Special District Judge, Villupuram in M.A.C.T.O.P.No.77 of 2016. The parties are referred to in the same rank as before the Tribunal. The challenge is on three grounds.

(a)Contributory negligence.

(b)No nexus between death and injuries.

(c)The driver of the 1st respondent vehicle did not possess valid driving licence.

2. It is the contention of the learned counsel appearing for the Insurance Company that the accident was a head on collision and therefore the Tribunal ought to have apportioned the liability equally between vehicles, in which the deceased was travelling and the motor cycle belonging to the 1st respondent, which had come from the opposite direction.

3. The deceased was travelling pillion in the 3rd respondent's

motor bike bearing registration No.PY 01 AL 3462, proceeding in the Kuyalapalayam road towards North to South direction and when they was nearing Kuyalapalayam Iyyanar Temple, the 1st respondent's motor bike bearing registration no. PY 01 BD 8395 driven in a rash and negligent manner and coming in the opposite direction dashed against the motor bike in which the deceased was riding.

4. The 2nd respondent Insurance Company would contend that when the same is nothing but an head on collision the Tribunal below has erred in fastening the entire liability on the 1st respondent.

5. The learned counsel for the Insurance Company had pleaded that there is no nexus between the death and injuries, since the petitioners had failed to file official medical notes from the Hospital, where the deceased was admitted and had died. It is seen that the deceased had sustained injuries to the Spinal Cord and was finding it

very difficult to walk.

6. A perusal of Ex.P.3, Discharge Slip from Indira Gandhi Government Hospital and Postgraduate Institute, Puducherry shows that the deceased was suffering Traumatic Quadriparesis and Paralytic Ileus.

7. A perusal of Ex.P.4, Discharge against medical advice, would show that the deceased had suffered a *traumatic disc proplase with cord injury with quadriplegia with bowel and bladder involvement.* The deceased was suffering from a pain in the neck and unable to move his lower and upper limbs. The deceased had to undergo surgery on the spine.

8. A perusal of Ex.P.7, Discharge Summary would show that the deceased was unable to move freely. The deceased was initially

treated for a day i.e., from 21.03.2011 till 22.03.2011. Thereafter, he was in the Hospital from 11.04.2011 to 21.04.2011 and the discharge summary Ex.P.7, does not indicate that he has improved.

9. These documents would clearly indicate that the deceased has suffered serious injuries to his Spinal cord and there is nothing to indicate that the deceased has got well.

10. The Insurance Company has not been able to establish that the deceased had recovered and thereafter he had passed away. However, in the instant case, it is seen that the deceased had died while continuing treatment. Therefore, the death is a direct result of the accident.

11. As regards the argument of the Insurance Company that there is no driving licence for the driver of the 1st respondent vehicle,

the Tribunal has also observed that the driving licence of the driver of the 1st respondent's vehicle has not been produced for the scrutiny of the Court.

12. Heard the learned counsels and perused the records.

13. From the manner in which the accident has occurred and which has not been refuted by the others, it is clear that both the vehicles are jointly liable to compensate the deceased. Therefore, the award is apportioned equally between the 1st and 3rd respondents.

14. The Tribunal has awarded a notional income at Rs.7,000/-. Considering the fact that the deceased was a Mason and taking into account the year of accident, the notional income is fixed at a sum of Rs.6,000/-, to which 40% is added towards future prospects. Therefore, the notional income would be a sum of Rs.8,400/-. The

annual income would be Rs.1,00,800/-, of which 1/4th has to be deducted towards personal expenses. Therefore, annual income would work out to a sum of **Rs.75,600/-.** The appropriate multiplier is 15 therefore the award under the head of loss of income is reduced to a sum of **Rs.11,34,000/-** and the award remains unchanged with reference to the other.

15. The award of the Tribunal below is re-worked as follows:

Head	***Award of the Tribunal***	***Award of the High Court***	***Remarks***
Loss of Income	**Rs.13,23,000/-**	**Rs.11,34,000/-**	**Reduced**
Loss of Consortium	Rs.44,000/-	Rs.44,000/-	Confirmed
Parental Consortium	Rs.88,000/-	Rs.88,000/-	Confirmed
Funeral Expenses	Rs.16,500/-	Rs.16,500/-	Confirmed
Loss of Estate	Rs.16,500/-	Rs.16,500/-	Confirmed
Total	Rs.14,88,000/-	**Rs.12,99,000/- together with**	

Head	*Award of the Tribunal*	*Award of the High Court*	*Remarks*
		interest @ 7.5% p.a.	

16. The amount shall be apportioned between the 1st respondent and the 3rd respondent on a 50:50 basis. Since the driver of the 1st respondent's vehicle did not possess a driving licence, there is a violation of Insurance Policy. Therefore, the 2nd respondent Insurance Company shall pay and recover the same from the 1st respondent. In all other respects, the award of the Tribunal below stands confirmed.

17. The respondents 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 Judgement, to the credit of M.A.C.T.O.P.No.77 of 2016. On such deposit, the petitioners are permitted to withdraw their respective

share of the award amount, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by filing necessary application before the Tribunal.

18. The share of the minor petitioners, namely, the 2nd and 3rd petitioners are directed to be deposited in Fixed Deposit in any one of the Nationalised Banks till they attain majority. On such deposit, the 1st petitioner being the mother of the minor petitioners is permitted to withdraw the accrued interest once in three months for the welfare of the minor petitioners.

19. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

26.09.2022

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Index : Yes/No
Speaking order/non-speaking order

To,
The Motor Accidents Claims Tribunal,
Special District Judge,
Villupuram.

P.T.ASHA, J.,

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