



CMA.No.447 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.447 of 2020

- 1.Deivanayagi Ammal
- 2.Gnanasekaran
- 3.Lakshmi

... Appellants

Vs.

- 1.M.Velayudham
- 2.The Manager,
Bajaj Allianz Insurance Co. Ltd.,
N.25/26, Prince Towers,
4th Floor, College Road,
Nungambakkam,
Chennai - 600034.

... Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicle Act to set aside the judgement and decree dated 30.03.2012 made in MCOP No.194 of 2007 passed by the Motor Accidents Claims Tribunal, Arni, Thiruvannamalai District.



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For Petitioners : M/s.J.Ashok

For Respondents : G.Vasudevan [R.2]

: No appearance [R.1]

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JUDGEMENT

Aggrieved by the compensation awarded by the Motor Accidents Claims Tribunal, Arni, Thiruvannamalai District, the claimants are before this Court. The claimants are aggrieved that the Tribunal below has treated the deceased to be a gratuitous passenger and had awarded a compensation of a sum of Rs.60,000/- under the head of No Fault Liability. In order to appreciate the grievance of the claimants it is necessary to briefly touch upon the facts which has culminated in the filing of the above CMA.

2. The petitioners/claimants are the children of the deceased Arunachalam. The deceased Arunachalam, an agriculturist was travelling in a Bajaj Minidor Auto belonging to the 1st respondent and insured with the 2nd respondent. He was carrying the plants that had grown in his field to the market on 10.01.2006. While the vehicle was proceeding on the Vellore to Arni Main Road, all of a sudden the tyre of the vehicle had burst and the



vehicle had capsized and the deceased Arunachalam had sustained grievous injuries on his head, right leg, back etc. He was rushed to the Government Hospital at Adukkamparai where he was initially treated and thereafter, for further treatment he was referred to the CMC Hospital, Vellore. However, the said Arunachalam succumbed to his injuries. The claimants had sought a compensation of a sum of Rs.5,00,000/-.

3. The 2nd respondent/insurance company had initially filed a counter denying the averments contained in the petition and contending that the driver of the 1st respondent's vehicle was not responsible for the accident and therefore, the insurance company was not bound to compensate the petitioners. In the additional counter, the insurance company had taken a plea that the sitting capacity of the vehicle was two and at the time of the accident three persons were being carried and therefore, the petitioner was a gratuitous passenger and the insurance company was not liable to compensate him.

4. The Tribunal below has held that the driver of the vehicle was



responsible for the accident, but however, the Tribunal below held that the vehicle being a goods vehicle and the deceased was travelling in the same as a gratuitous passenger, therefore, the Tribunal held that the 2nd respondent/insurance company was only liable to pay a sum of Rs.60,000/-. It is challenging this award the claimants are before this Court.

5. Heard both the counsel.

6. The only ground on which the Tribunal has granted the amounts under no fault liability is that the petitioner was traveling as a gratuitous passenger. Admittedly, the sitting capacity of the vehicle is two including the driver. The 2nd respondent/ insurance company which has come forward with a categorical case that the van was carrying three persons at the time of the accident has not proved the same either by oral or documentary evidence. On the contrary, it is the case of the claimants that the deceased Arunachalam was traveling in the vehicle as an owner of the goods besides the driver. Considering the fact that the sitting capacity is two and taking into account the fact that the insurance company has not been able to prove the presence of a third person, the Tribunal below has erred in observing that the deceased



Arunachalam was a gratuitous passenger. That apart he was travelling as the owner of the goods which fact has also not be refuted Therefore, the award granted only under the head of no fault liability has to necessarily be set aside and adequate compensation be granted to the petitioners, considering the accident to be a fatal one. The deceased admittedly was an agriculturist. He would have definitely earned at least a sum of Rs.5,000/- per month. Therefore, the notional income can be fixed at a sum of Rs.5,000/-. The annual income would work out to a sum of Rs.60,000/-, out of which 1/3rd has to be deducted towards personal expenses. Therefore, the family would be receiving a sum of Rs.40,000/- per month. The deceased was aged about 60 years at the time of the accident, the appropriate multiplier for his age is '5'. Therefore, the compensation under the head of loss of income works out to a sum of Rs.2,00,000/-. Further, the petitioners are entitled to a sum of Rs.15,000/- under the head of funeral expenses. Another Rs.15,000/- under the head of loss of estate. The petitioners are all major children of the deceased Arunachalam and who are not totally dependent on him. Therefore, a sum of Rs.20,000/- each can be granted to the 3 petitioners under the head of loss of love and affection. Therefore, a sum of Rs.60,000/- falls due under this head. The total compensation, therefore, works out to a sum of



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Rs.2,90,000/-

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7. Therefore, the modified compensation would work out as follows;-

S.No	Description	Amount awarded Tribunal (Rs)	by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	No fault liability	Rs.60,000/-	--	Set aside
2.	Loss of income	--	2,00,000/-	Granted
3.	Love and Affection	--	60,000/-	Granted
4.	Funeral Expenses	--	15,000/-	Granted
5.	Loss of estate	--	15,000/-	Granted
	TOTAL	60,000/-	2,90,000/-	Enhanced by Rs.2,30,000/-

8. Therefore, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal be and hereby is enhanced to a sum of Rs.2,90,000/- from Rs.60,000/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other respects the award of the Tribunal is confirmed. The 2nd respondent/Insurance Company is directed to deposit the said amount (Rs.2,90,000/-) to the credit of MACT.OP.No.194 of 2007 on the file of the Motor Accidents Claims Tribunal, Arni, Thiruvannamalai District. together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the



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amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimants/appellants are permitted to withdraw the award amount now determined by this Court as apportioned by the Tribunal along with interest and costs, after adjusting the amount if any already withdrawn. The claimants/appellants shall pay the Court fee for the enhanced amount, if payable. The Tribunal shall not disburse of the amount till such time as the certified copy showing proof of entire payment of Court fee has been produced. No costs. Consequently, the connected Miscellaneous Petition is closed.

20.10.2022

Index : Yes/No
Internet: Yes/No
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To
1. The Motor Accidents Claims Tribunal,
Arni, Thiruvannamalai District.

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



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P.T. ASHA, J,

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