



C.M.A.No.705 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE V.SIVAGNANAM**

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and
C.M.P.No.4246 of 2021

The Branch Manager,
Cholamandam MS General Insurance
Company Ltd.,
II Floor, K.K.Tower, Varishnavi Nagar,
next to Hosur Dharga Lake,
N.H.-7 Main Road,
Hosur, 635 109

... Appellant

Vs.

1. Balacharuvappa
2. Lakshamma
3. Radhamma
4. Minor Vinay Prasad
5. Minor Vinith Kumar

(respondents 4 & 5 are minors,
rep. by their next friend and mother
Mrs. Radhamma)

6. M.Ramachandrappa

... Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree in M.C.O.P.No.6 of 2017 dated 09.03.2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Hosur.

For Appellant : Mr. K. Vinod

For R1 to R5 : Mr. P.A.Sudeshkumar

For R6 : No Appearance

J U D G M E N T

(Judgment of the Court was delivered by V.SIVAGNANAM,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 09.03.2018 made in M.C.O.P.No.6 of 2017 on the file of Motor Accident Claims Tribunal, Additional District Court, Hosur.

2. The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.6 of 2017 on the file of Motor Accident Claims Tribunal,



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Additional District Court, Hosur. The respondents 1 to 5 have filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Muniyappa, who died in the accident that took place on 19.07.2013.

3.According to the respondents 1 to 5, on the date of accident i.e., on 19.07.2013, at about 1.00 p.m., when the deceased was ploughing and levelling the land by using the Tractor, owned by 6th respondent bearing Registration No.TN 70 J 2847 hit a rock, fell down under the rotor wheel teeth and died on the spot. Therefore, the respondents 1 to 5 filed the above claim petition claiming compensation for the death of said Muniyappa against the 6th respondent/owner of the Tractor and the appellant/Insurance Company, insurer of the said Tractor.

4.The 6th respondent, owner of the Tractor, remained ex-parte before the Tribunal.



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5.The appellant/Insurance Company filed counter statement and denied the averments made in the claim petition and stated that due to the sole negligence of the deceased/driver of the Tractor, the accident occurred. The details of the deceased driving licence is neither mentioned in the police records nor in the claim petition. The insurer had handed over the vehicle to a non-licensed person on the date of the accident and violated the terms and conditions of the policy and hence, the appellant/ Insurance Company has to be exonerated from the liability. The appellant/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents 1 to 5 is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 3rd respondent, wife of the deceased, examined herself as P.W.1, one Prabhakar, eye-witness to the accident was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. On the side of the appellant/Insurance Company, neither any witness was examined, nor any document has been marked .



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7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the first respondent's vehicle and directed the 2nd respondent/Insurance Company being insurer of the said Tractor to pay a sum of Rs.23,88,000/- as compensation to the respondents 1 to 5 at the first instance and then recover the same from the 6th respondent, owner of the Tractor.

8. Against the said award dated 09.03.2018 made in M.C.O.P.No.6 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 deceased himself is responsible for the accident. Hence, he is not entitled to claim compensation under the Motor Vehicles Act and he can claim compensation only under the Workmen's Compensation Act. The 6th respondent, is the employer of the deceased. In this case, there is no proof to show that the deceased was an employee under the 6th respondent. Further, if he claims compensation under the Workmen's Compensation Act, the



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compensation limit must be within that Act, and not exceed the limitation. In this case, the Tribunal awarded the amount exceeding the limit of Workmen's Compensation Act and contrary to the decision laid down by the Hon'ble Supreme Court reported in **2005 ACJ 1323(National Insurance Co vs Prembai Patel And Others)**. He further contended that the Tribunal awarded future prospects under separate head and it is contrary to the settled principle laid down by the Apex Court in Pranay Sethi's Case. Apart from that, the Tribunal fixed the monthly income of the deceased as Rs.12,000/- without any supporting evidence and thus, pleaded to set aside the award passed by the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 to 5, justifying the award passed by the Tribunal contended that during the year 2013, a driver can easily earn Rs.12,000/- as monthly income. Therefore, the monthly income fixed by the Tribunal is not excessive and he pleaded to dismiss the appeal filed by the Insurance Company.



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11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 5 and perused the entire materials on record.

12. On a perusal of the records, it reveals that the deceased Muniappa was a driver and working under the 6th respondent. At the time of accident, he was ploughing and levelling the field of the employer. While, he was on work, the Tractor hit a rock and caused the accident, and in consequence to the accident, he sustained injury and died on the spot. It was supported by the evidence of P.W.2 and his evidence was not controverted by the respondent before the Tribunal by letting any evidence to show that he was not an employer under the 6th respondent. In those circumstances, there is no merit in the contention of the learned counsel for the appellant that the deceased was not employer of the 6th respondent,



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13. The maintainability of the claim petition before the Tribunal is also sustainable, in view of Section 167 of the M.V. Act. It is also settled by the Hon'ble Supreme Court that if a person succumbed to injury, his representatives may claim compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act. Therefore, the claim before the Tribunal is maintainable and the arguments in this regard have also no merit.

14. With regard to compensation, the decision relied on by the learned counsel for the appellant is not applicable to this case for the reason that in that case, the vehicle was insured for Act policy and not covered under comprehensive policy. Therefore, the claim was restricted to the Workmen's Compensation Act. But, in this case, the claimants filed policy as Ex.P.3, which shows that it is a package policy. Under these circumstances, the compensation need not be limited with Workmen Compensation Act alone. Therefore, the arguments in this regard have no merit.



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15. As far as quantum of compensation is concerned, it is the case of the respondents 1 to 5 that at the time of accident, the deceased was a tractor driver, aged 37 years, earning a sum of Rs.18,000/- per month. The respondents 1 to 5 have not filed any documents to prove the avocation and income of the deceased. In the absence of any documentary evidence, the Tribunal considering the nature of work, age and year of accident, fixed a sum of Rs.12,000/- per month as notional income of the deceased. The accident happened in the year 2013. During that period, the driver may easily get a sum of Rs.12,000/- per month as income. Therefore, the monthly income fixed by the Tribunal is in order. The Tribunal, following the judgment of the Hon'ble Apex Court reported in **2009(2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another)**, rightly applied multiplier '15'. As per Ex.P.5- Post Mortem Certificate, the deceased was aged 39 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in **2017 (2) TNMAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**, the respondents 1 to 5 are entitled to 40% enhancement towards future prospects. However, the Tribunal has awarded a sum of Rs.16,20,000/- towards loss of dependency and



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Rs.6,48,000/- towards loss of future prospects separately under two heads.

The amounts awarded by the Tribunal under other heads are just and reasonable and hence the same are hereby confirmed. In view of the above, there is no error in the order of the Tribunal warranting interference by this Court.

16. In the result, the Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.23,88,000/- alongwith interest at the rate of 7.5% per annum is confirmed. The appellant/Insurance Company is directed to deposit the award amount alongwith interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount, as per the apportionment fixed by the Tribunal, alongwith proportionate interest and costs, after adjusting the amount, if any, already withdrawn. The shares of the minor respondents 4 & 5 are directed to be deposited in any one of the Nationalized Bank till the minor respondents attain majority. The third respondent, the mother of the minor respondents is permitted to withdraw the



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accrued interest, once in six months for the welfare and benefit of the minor respondents. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (V.S.G., J)
14.11.2022

Index : yes/no

Speaking order : yes/no

mrp

To

1. The Additional District Judge
Motor Accident Claims Tribunal
Hosur.

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



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V.SIVAGNANAM ,J.**

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