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C.M.A.No.4372 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.4372 of 2019 and

C.M.P.No.24888 of 2019

National Insurance Company Limited,
No.3, Middleton Street,
Kolkatta – 700 071.

.. Appellant

Vs.

1.A.Selvi

2.Minor. A.Swetha

(Minor 2nd respondent represented
by her Mother / Next Friend,
A.Selvi, 1st respondent herein)

A.Rathinam (died)

(Amendment carried out as per order in
M.P.No.858 of 2014 dated 10.06.2014
as 3rd respondent impleaded)

(Amendment carried out as per order in
M.P.No.380 of 2018 dated 31.01.2018
as 3rd respondent died)

3.S.P.Pushparaj

.. Respondents



Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2018, made in M.C.O.P.No.5566 of 2005, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.R.Nithesh Kumar
for Mrs.R.Sree Vidhya
For RR 1 & 2 : Mr.M.R.Radhakrishnan

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 against the judgment and decree dated 31.01.2018, made in M.C.O.P.No.5566 of 2005, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant is the 2nd respondent in M.C.O.P.No.5566 of 2005, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. The respondents 1 & 2 and one A.Rathinam / claimants filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one A.Arumugam, who died in the accident that took place on 24.05.2004. Pending claim petition, the 3rd claimant viz., A.Rathinam died and the amendment carried



out as per the order dated 31.01.2018 passed in M.P.No.380 of 2018.

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3.According to respondents 1 & 2, on 24.05.2004 at about 17.00 hours, while the deceased A.Arumugam was riding the motorcycle on the Karaikudi – Madurai road, the driver of the goods vehicle bearing Registration No.TN 45 Y 6579, drove the same in a rash and negligent manner and dashed against the motorcycle driven by the said A.Arumugam and caused the accident. In the accident, the said A.Arumugam died on the spot. Hence, the respondents 1 & 2 filed the said claim petition claiming compensation against the 3rd respondent and appellant, being the owner and insurer of the goods vehicle respectively.

4.The 3rd respondent – owner of the goods vehicle remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 & 2 and one A.Rathinam in the claim petition. The appellant denied the fact that valid insurance policy issued by them covering the goods vehicle was in force at the time of accident and also the driver of the goods vehicle was possessing valid driving license to drive the goods



vehicle and the vehicular records of the goods vehicle. The owner of the goods vehicle remained exparte and failed to contest the case. The owner and insurer of the motorcycle driven by the deceased have to be impleaded as necessary parties in the claim petition. According to appellant, the deceased only drove the motorcycle in a rash and negligence manner and invited the accident. Hence, the respondents 1 & 2 are not entitled to claim any compensation from the appellant. The deceased also contributed negligence to the accident and hence contributory negligence has to be fixed on the part of the deceased. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 & 2 and one A.Rathinam is highly excessive and prayed for dismissal of the claim petition as against the appellant.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Chinnaya, eyewitness to the accident was examined as P.W.2 and one Shankar, Employer of the deceased was examined as P.W.3 and 9 documents were marked as Exs.P1 to P9. 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 driving by the driver of



the goods vehicle belonging to 3rd respondent and directed the appellant, being the insurer of the goods vehicle to pay a sum of Rs.13,09,000/- as compensation to the respondents 1 & 2 and dismissed the claim petition as against the 3rd claimant viz., A.Rathinam, as she died.

8.Questioning the quantum of compensation awarded by the Tribunal in the award dated 31.01.2018, made in M.C.O.P.No.5566 of 2005, the appellant has come out with the present appeal.

9.Though the appellant-Insurance Company has raised various grounds with regard to quantum of compensation, at the time of arguments, the learned counsel appearing for the appellant restricted his arguments only with regard to fixation of monthly income of the deceased by the Tribunal and submitted that the Tribunal without any basis, erroneously fixed a sum of Rs.7,000/- as monthly income of the deceased and granted excessive amount as compensation and prayed for reducing the amount granted by the Tribunal.

10.The learned counsel appearing for the respondents 1 & 2 contended that at the time of accident, the deceased was doing the work as Mason at ECC



Constructions, site work at Singapore and was earning a sum of Rs.21,000/- per month. The respondents 1 & 2 proved the income of the deceased by examining one Shankar, employer of the deceased as P.W.3 and by marking Ex.P6 / salary certificate. But the Tribunal has fixed only a sum of Rs.7,000/- as monthly income of the deceased and awarded compensation. The Tribunal has not awarded any amount towards loss of love and affection to minor 2nd respondent and loss of estate. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for respondents 1 & 2 and perused the entire materials on record.

12.From the materials on record, it is seen that it is the case of the respondents 1 & 2 that at the time of accident, the deceased was a Mason at ECC Constructions, site work at Singapore and earning a sum of Rs.21,000/- per month. To prove the said contention, the respondents 1 & 2 examined one Shankar, employer of the deceased as P.W.3 and marked Ex.P6 / salary certificate of the deceased. In the absence of any other supporting documentary evidence to prove



the income of the deceased except Ex.P6 / salary certificate, the Tribunal fixed a sum of Rs.7,000/- per month as notional income of the deceased. The accident is of the year 2004 and the monthly income fixed by the Tribunal is excessive. Considering the year of accident, age and nature of work done by the deceased, a sum of Rs.6,500/- per month is fixed as notional income of the deceased. As per Ex.P5 / legal heirship certificate, the deceased was aged 34 years at the time of accident. 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]**, the Tribunal has rightly granted 40% enhancement towards future prospects and applied multiplier '16'. There are two dependents of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing a sum of Rs.6,500/- as monthly income of the deceased, granting 40% enhancement towards future prospects, applying multiplier '16' and deducting 1/3rd towards personal expenses, the compensation awarded by the Tribunal towards loss of dependency is reduced to Rs.11,64,800/- {Rs.9,100/- [Rs.6,500/- + Rs.2,600/- (40% of Rs.6,500/-) X 12 X 16 X 2/3]}. The Tribunal has not awarded any amount towards parental consortium to 2nd respondent. The 2nd respondent-daughter of the deceased is entitled to a sum of



Rs.40,000/- towards parental consortium. The Tribunal has not granted any amount towards loss of estate. The respondents 1 & 2 are entitled to a sum of Rs.15,000/- towards loss of estate. 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	12,54,336/-	11,64,800/-	Reduced
2.	Loss of consortium to 1 st respondent	40,000/-	40,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Parental consortium to 2 nd respondent	-	40,000/-	Granted
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.13,09,336/- Rounded off to Rs.13,09,000/-	Rs.12,74,800/-	Reduced by Rs.34,200/-

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,09,000/- is hereby reduced to Rs.12,74,800/-. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, 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.5566 of 2005, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. On such deposit, the 1st respondent is permitted to withdraw her respective share of the award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 2nd respondent attains majority. On such deposit, the 1st respondent, being the Mother of the minor 2nd respondent is permitted to withdraw the accrued interest once in three months for the welfare the minor 2nd respondent. The appellant is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.5566 of 2005, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed.

No costs.

(V.M.V., J) (T.V.T.S., J)
23.09.2022

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and
T.V.THAMILSELVI, J.

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To

- 1.The II Judge,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.4372 of 2019

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