



C.M.A.(MD)No.1916 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 30.09.2022

Delivered On : 19.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1916 of 2013

The Branch Manager,

M/s. National Insurance Co. Ltd.,

Divisional Office II, 2nd Floor,

Balaji Towers, 11, Ramakrishna Road,

Salem.

.. Appellant /3rd Respondent

Vs.

1.Sundaram

2.Malarkodi

3.Minor.Prasanth

(Minor Prasanth is represented by

his father and guardian V.Sundaram,

the 1st respondent)

... Respondents 1 to 3 / Petitioners

4.R.Rajendran

... 4th Respondent / 1st Respondent

5.Palanisamy

... 5th Respondent /2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No. 121 of 2008, dated 27.09.2012, on the file of the Motor Accidents Claims Tribunal, District Court, Karur.



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For Appellant : Mr.J.S.Murali
For Respondents : Mr.V.Nagarajan for R1 to R3
: No appearance for R4 & R5

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, in M.C.O.P.No.121 of 2008, dated 27.09.2012, on the file of the Motor Accidents Claims Tribunal, District Court, Karur. The appellant herein is the third respondent, the respondents 1 to 3 herein are the claimants, the fourth respondent herein is the first respondent and the fifth respondent herein is the second respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.121 of 2008, is as follows:

On 02.02.2008, when the deceased – Gowthaman was travelling in a bus bearing Registration No.TN-34-M-5599, the driver of the bus drove the bus in a rash and negligent manner and the bus hit on a road side stone, the deceased and others sustained injuries and the deceased died on the spot. At the time of accident, the deceased was aged about 18 years and he was doing diploma in teacher training. The petitioners are his dependants and they claimed a sum of Rs.10,00,000/- as compensation.



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3.The first respondent and the second respondent are set as exparte.

4. Brief substance of the counter filed by the third respondent, in M.C.O.P.No.121 of 2008, is as follow:

The manner of the accident as narrated by the petitioners is denied. The deceased travelled on the rear foot board of the bus and he has contributed to the accident. The educational status and other future prospects are all denied. There is policy violation. The first respondent did not possess valid driving licence. The vehicle was not having permit and fitness certificate. More number of persons were allowed to travel in the bus and the accident had taken place due to overload. The claim is excessive.

5. On the side of the claimants, 2 witnesses were examined and 17 documents were marked. On the side of the respondents, 2 witnesses were examined and 10 documents were marked. 5 documents were marked as Ex.X1 to Ex.X5. After considering both sides, the Tribunal awarded a sum of Rs.2,30,000/- as compensation to the claimants.



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6. Against the award, the third respondent / appellant has filed

this appeal on the following grounds:-

6.1. The capacity of the bus is 57 and 59. On the date of accident, totally 74 persons travelled in the bus. R.W.1 has deposed to that effect. R.W.2-company official has deposed that the accident has occurred only due to overcrowd, but, the Tribunal failed to frame any issue on this aspect. The Tribunal ought to have exonerated the Insurance Company and ought to have directed the owner of the vehicle to pay the compensation.

6.2. The Tribunal failed to consider that the deceased travelled on the rear foot board of the bus and that he contributed to the accident. The Tribunal failed to deduct 50% of the income for the own expenses of the deceased. The award under various heads are all excessive.

7. On the side of the appellant, it is stated that the capacity of the bus is 59 persons, but, at that time of accident, 74 persons travelled in the bus and overload is the reason for the accident. Since policy conditions are violated, the appellant is not liable to pay compensation. The driver of the bus was examined as R.W.1. He has deposed that the deceased travelled in the footboard and he slipped down from the bus and the deceased is liable for contributory negligence.



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8. On the side of the respondent, it is stated that the complaint was lodged only by a co-passenger and the complainant was examined as P.W.2. R.W.1 is the driver of the bus and R.W.2 is an official from the Insurance company and that the evidence of R.W.1 and R.W.2 cannot be taken into consideration.

9. Ex.P1 is the copy of the F.I.R. P.W.2 is the eye witness. R.W.1 is the driver of the vehicle. R.W.2 is an official from the Insurance Company. Hence, the evidence of R.W.1 and R.W.2 cannot be taken into consideration. On the basis of the evidence of P.W.2 and on the basis of Ex.P1, it is decided that the occurrence has taken place only due to the rash and negligent driving of the bus driver.

10. On the side of the appellant, it is stated that the claimants are parents and the brother of the deceased. The deceased is a bachelor, but, the Tribunal deducted only 1/3rd of the income and that 50% ought to have been deducted.

11. On the side of the respondent, it is stated that the policy was in force at the time of accident. The deceased was a student of a teacher



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training institute. A judgment of this Court reported in 2022-2-TNMAC-189 (Chandrasekar V. C.Pusshparaj) is cited, wherein, this Court has fixed the monthly income of the deceased -student as Rs.5,000/- per month.

12. The Tribunal fixed the income of the deceased at Rs.15,000/- per year, since the deceased was a non-earning member. This accident has taken place in the year 2008 and the subsequent Judgment of this court cannot be taken into consideration in fixing the income. Hence, it is decided that the income fixed by the Tribunal is reasonable.

13. On the side of the appellant, it is stated that the deceased died as bachelor, but, instead of deducting 50%, the Tribunal has deducted 1/3rd, which is wrong.

14. As per the dictum of the Hon'ble Supreme Court in Sarla Verma's case reported in 2009-2-TNMAC-1, for a bachelor, 50% ought to have been deducted towards his own expenses. Hence, after deducting 50% towards his own expenses, the deceased might have contributed Rs.7,500/- per year to his family members. The age of the deceased is 18 years, at the



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time of accident. Hence, multiplier 18 is applicable. The claimants are entitled to Rs.1,35,000/- towards loss of income (Rs.7,500/- X 18 = Rs. 1,35,000/-).

15. The Tribunal awarded Rs.15,000/- for each of the parents for loss of love and affection and awarded Rs.10,000/- for the third claimant. The Tribunal awarded Rs.5,000/- towards funeral expenses and Rs.5,000/- towards transport expenses. Considering the judgment of the Hon'ble Supreme Court in Pranay Sethi's case and considering the date of accident, it is decided that the claimants are entitled to Rs.70,000/- towards conventional charges.

16. The total compensation is calculated as follows:-

Loss of income	:	Rs.1,35,000/-
Conventional charges	:	Rs. 70,000/-
Total compensation	:	 Rs.2,05,000/-



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17. This Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.2,30,000/- to **Rs. 2,05,000/-**.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.2,05,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount, if any, shall be refunded to the appellant / Insurance Company.**

(iii) On such deposit being made by the appellant / Insurance Company, the respondents 1 and 2 herein/ major claimants are permitted to withdraw their share amount as apportioned by the Tribunal with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The Tribunal is directed to deposit the share of the minor claimant/third respondent herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The first



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respondent, who is the father and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The claimants are not entitled for interest for the default period, if there is any.

19.10.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accidents Claims Tribunal,
District Court,
Karur.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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