



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.146 of 2020

and

C.M.P. (MD)No.2499 of 2020

M/s. National Insurance Co., Ltd.,
Through its Manager,
No.74-A, Paramathi Road,
Namakkal.

...Appellant/2nd Respondent

Vs.

1.Revathi
2.Minor. Gopika

*(Minor rep. by natural guardian and
mother the 1st respondent herein)*

3.Sarasal

...Respondents 1 to 3/
Petitioners 1 to 3

4.P.Thiyagarajan

...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree, dated 10.07.2019 passed in MCOP.No.366 of 2017 on the file of the Motor Accident Claims Tribunal/District Court, Karur.

For Appellant :Ms.P.Malini
For Respondents :No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment and decree, dated 10.07.2019 passed in M.C.O.P.No.366 of 2017 on the file of the Motor Accident Claims Tribunal/District Court, Karur.

2.It is a case of fatal accident. On 14.06.2017, the deceased was riding a motorcycle bearing Registration No.TN-39-C-2858 on Chinnadharapuram to Moolanur road. At about 9.30 p.m., when he proceeding near Othamanthurai Therku Thootam, a lorry bearing Registration No.TN-28-AM-2910, which got break down due to burst of
<https://hcservices.courts.gov.in/hcservices> ahead of his two wheeler on the road without any



signal light drawing the attention of the drivers of the other vehicles. As a result of which, the deceased sustained grievous injuries and immediately he was taken to a hospital. But due to the grievous injury, he died on the way to hospital.

3.The claimants have filed a claim petition in M.C.O.P.No.366 of 2017 on the file of the Motor Accident Claims Tribunal/District Court, Karur, seeking compensation of Rs.20,00,000/-.

4.Before the Tribunal, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and marked five documents as Exs.P1 to P5. On the side of the respondents, one witness was examined as R.W1 and marked two documents as Exs.R1 and R2.

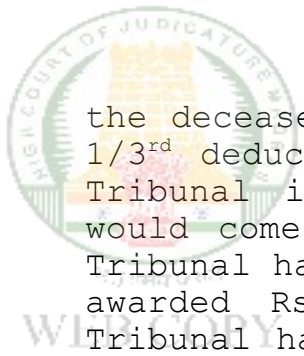
5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondents and also on appreciating the evidences on record, held that the accident occurred 80% of rash and negligent driving of the driver of the appellant's lorry and directed the appellant herein to pay a sum of Rs.17,61,011/- as compensation with 7.5% interest.

6.Against which, the appellant/Insurance Company Ltd., has filed this present appeal to set aside the award of compensation passed by the Tribunal.

7.Heard Ms.P.Malini, learned counsel appearing for the appellant and no representation for the respondents.

8.The learned counsel for the appellant contended that the deceased was driving the vehicle in a rash and negligent manner and he is only responsible for the accident. So the Tribunal ought to have fixed entire negligence on the deceased, but fixed 80% of negligence on the lorry, while the same was stationed on the left side of the road. He further contended that without any document to prove his income, the Tribunal has fixed Rs.11,000/- towards monthly income of the deceased and also added 40% for future prospectus. Hence, the award passed by the Motor Accidents Claims Tribunal is liable to be modified.

9.A perusal of records, it is seen that at the time of accident the age of the deceased was 35 years and he was doing hand loom weaving business and earning Rs.10,000/- per month. Though the claimants have not filed any document to prove the deceased's income, the Tribunal has wrongly fixed as Rs.11,000/- as monthly income. Hence, this Court fixed Rs.9,000/- as monthly income of the deceased and 40% added towards future prospectus of the deceased. Therefore, the notional income of the deceased arrived at Rs.12,600/- (Rs.9,000/- + Rs.3,600). Since there are three dependants depending on the income of the deceased, 1/3rd of the income should be provided by the Trial Court towards the personal expenses of



the deceased is confirmed. Hence, it would amount to Rs.12,600/- x $1\frac{1}{3}^{\text{rd}}$ deduction = Rs.8,400/- and multiplier '16' adopted by the Tribunal is also hereby confirmed. Thus, the loss of dependency would come to Rs.8,400/- x 12 x 16 = Rs.16,12,800/-. Further the Tribunal has awarded Rs.40,000/- towards loss of consortium and also awarded Rs.1,50,000/- towards loss of love and affection. The Tribunal has granted the award for both the heads. So the loss of love and affection awarded Rs.1,50,000/- by the Tribunal is deducted from the compensation award and this Court awarded Rs.40,000/- each of the claimants towards loss of consortium. All the other heads awarded by the Trial Court are hereby confirmed. The Tribunal has rightly fixed 20% liability on the deceased.

10. Accordingly, the claimants are entitled for compensation as follows:

Sl. No.	Compensation heads	Details of amount
1.	Loss of Income	Rs. 16,12,800/-
2.	Loss of Consortium (each Rs.40,000/-)	Rs. 1,20,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
6.	Transport Expenses	Rs. 10,000/-
	Total	Rs. 17,72,800/-

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.22,01,264/- to Rs.17,72,800/- with interest at the rate of 7.5% per annum.

(iii) The appellant/National Insurance Company Ltd., is directed to deposit 80% of compensation amount i.e., Rs.14,18,240/- (Rupees Fourteen lakhs eighteen thousand two hundred and forty only), less the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.366 of 2017 on the file of the Motor Accidents Claims Tribunal/District Court, Karur, within a period of six weeks from the date of receipt of a copy of this order.



(iv) On such deposit being made, the respondents/claimants are entitled to withdraw their respective share as per the ratio of apportionment made by the tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

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 District Judge,
The Motor Accident Claims Tribunal,
Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

+1 CC to M/s.P.MALINI, Advocate (SR-1036[F] dated 10/01/2022)

Judgment made in
C.M.A.(MD)No.146 of 2020
and
C.M.P.(MD)No.2499 of 2020
10.01.2022

CK(CO)

GC(18.02.2022) 4P 5C