



C.M.A(MD)No.386 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.10.2022

Pronounced on : 28.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.386 of 2019

The National Insurance Company Limited,
Represented through its Authorized Signatory,
706, Thenkasi Road, Rajapalayam,
Virudhunagar District.
Through its Branch Manager,
Rajapalayam.

...Appellant /2nd respondent

Vs

1.A.Ramjan Begam

2.M.Sulthan Beevi

3.A.Haseera Parveen

4.Minor A.Amina Bevi

(4th respondent is represented by her mother
and natural guardian, the 1st respondent
A.Ramjan Begam)

5.M.Muthupandian

6.M.Subbammal

...1st to 6th Respondents /

Petitioners

7.L.Brabhakaran

.. 7th respondent/1st respondent



C.M.A(MD)No.386 of 2019

PRAYER :-

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This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 19.11.2018, passed in MCOP No.171 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC), Theni.

For Appellant : Mr.J.S.Murali
For R1 to R4 : Mr.N.Nagarajan
For R7 : Mr.M.Thiruvavukkarasu

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in MCOP No.171 of 2017 on the file of the Motor Accidents Claims Tribunal, Additional District Judge(FTC), Theni. The appellant herein is the second respondent, respondents 1 to 6 are the claimants and the seventh respondent is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 02.07.2016 at about 2 p.m., when the deceased Abdul Salam @ Gandhi was riding a two wheeler bearing registration number TN 67 AR 4899 keeping the left side of the Sattur-Sivakasi Main road, near Mayiladumdurai



C.M.A(MD)No.386 of 2019

TSK Fire Works shop, a TATA Indigo bearing registration number TN 59 AZ 8146 came in a rash and negligent manner, hit against the deceased and he died on the spot. The petitioners are the dependants of the deceased and they claim a sum of Rs.30,00,000/- as compensation.

3.Brief substance of the counter filed by the first respondent is as follows:

The manner of accident as stated in the petition is false. The driver of the car was driving the vehicle a slow speed, keeping the left side of the road in. It was the deceased who drove the two wheeler in a rash and negligent manner, hit against the car and he invited the accident. The driver of the car was not responsible for the accident. The car was insured with the second respondent and the first respondent is not liable to pay compensation.

4.Brief substance of the counter filed by the second respondent is as follows:

The driver of the vehicle was not having valid driving licence. He has no badge endorsement. The first respondent violated the policy conditions by allowing the driver to drive the vehicle without proper driving licence. The



C.M.A(MD)No.386 of 2019

accident did not happen due to the fault of the first respondent driver. It was the deceased who was not wearing helmet, who was not having valid driving licence and riding a vehicle which was not insured, drove the vehicle in a rash and negligent manner and dashed against the car. The owner of the two wheeler is a necessary party to the case. The case is bad for non joinder of necessary parties. The amount claimed is excessive.

5.Three witnesses were examined and nine documents were marked on the side of the petitioner. Two witnesses were examined and two documents were marked on the side of the respondent. The Tribunal awarded a sum of Rs.19,92,500/- as compensation.

6.Against the award, the second respondent preferred this appeal on the following grounds:

The Tribunal is wrong in fixing the notional monthly income as Rs.10,000/-. As per the dictum of the Hon'ble Supreme Court in Syed Sadiq Case. The Tribunal ought to have fixed the monthly income as Rs.6,500/-. The Tribunal is wrong in fixing the age of the deceased. The age of the deceased as per the Aadhaar Card is 46 years. The age of the deceased as per the Voter ID is 44 years. The Tribunal ought to have applied multiplier 14



C.M.A(MD)No.386 of 2019

instead of 15. The Tribunal awarded a sum of Rs.3,05,000/- towards conventional heads, instead of Rs.70,000/- as per the dictum of the Hon'ble Supreme Court in Pranay Sethi case.

7.On the side of the respondents it is stated that the multiplier was rightly fixed by the Tribunal. The age of the deceased is only 40 years. In the post mortem report, the age of the deceased was mentioned as 40 years and the award has to be confirmed.

8.The liability was not denied in the appeal. A perusal of the records reveals that Aadhaar Card and voter ID were not marked as documents. The Tribunal has fixed the age of the deceased as 40 years, on the basis of Ex.P2- post mortem certificate. No other document was filed to prove the age of the deceased. Hence it is decided that the age of the deceased as fixed by the Tribunal is reasonable.

9.On the side of the appellant it is stated that the Tribunal fixed the monthly income as Rs.10,000/- which is wrong. The notional salary is to be fixed as Rs.6500/- per month. On the side of the respondent it is stated that the deceased was working as a labour and was earning a sum of Rs.600/- per



C.M.A(MD)No.386 of 2019

day. P.W.3 was the manager in the Mohana fire works, he has deposed that the deceased was working as a labour and he was receiving a salary of Rs. 3000/- per week and the salary certificate and the attendance register were marked as Ex.P8 and Ex.P9. Only on the basis of the evidence of P.W.1 and on the basis of Ex.P6, Ex.P8 and Ex.P9, the Tribunal has fixed the monthly income as Rs.10,000/-. When there is oral or documentary evidence to prove the income, there is no necessity to follow the norms for notional income. The Tribunal has added 25% towards future prospects, deducted 1/4 of the income towards personal expenses, applied multiplier 15 and fixed loss of income Rs.16,87,500/-, which is reasonable.

10.The Tribunal has awarded Rs.5000/- towards transport expenses, Rs. 15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium to the wife and Rs.1,50,000/- towards loss of love and affection for respondents 2 to 4, Rs.15,000/- towards loss of estate, Rs.40,000/- towards filial consortium for respondents 5 and 6.

11.The accident has happened in the year 2016. As per the decision of the Hon'ble Supreme Court in Pranay Sethi case, the claimants are entitled to



C.M.A(MD)No.386 of 2019

Rs.70,000/- towards conventional charges. Hence the compensation is calculated as follows:

Loss of income	-	Rs.16,87,500/-
Conventional charges	-	Rs. 70,000/-

Total	-	Rs.17,57,500/-

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.19,92,500/- to **Rs.17,57,500/- (Rupees Seventeen Lakhs Fifty Seven Thousand Five hundred only)** which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant / insurance company is directed to deposit the entire compensation of Rs.17,57,500/- (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 proportionate costs to the credit of MACOP No.171 of 2017 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge (FTC), Theni, within a period of eight weeks from the date of receipt of a copy of this order.



C.M.A(MD)No.386 of 2019

(iii) On such deposit being made by the appellant / insurance company, the first respondent herein/ 1st claimant is entitled to a share a sum of Rs. 9,57,500/- (Rupees Nine Lakhs Fifty Seven Thousand and five hundred only) with proportionate interest and cost, the respondents 2 and 3 / claimants 2 and 3 are entitled to a share of Rs.2,00,000/-(Rupees Two Lakhs only)each with proportionate interest and cost and the respondents 5 and 6 herein, are entitled to a share of Rs.1,00,000/-(Rupees One Lakh only)each with proportionate interest and cost; The respondents 1,2, 3, 5 and 6 are permitted to withdraw their respective shares with proportionate interest and cost.

(iv) The fourth respondent/claimant (minor) herein is entitled for an amount of Rs.2,00,000/- (Rupees Two Lakhs only) with proportionate interest, which is ordered to be deposited in any one of the nationalized bank until he attain majority and the first respondent/claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

28.11.2022

Index: Yes / No
Internet : Yes / No

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C.M.A(MD)No.386 of 2019

To

- 1.The Motor Accidents Claims Tribunal, Additional District Court (FTC),
Theni.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.386 of 2019

R. THARANI, J

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C.M.A(MD)No.386 of 2019

28.11.2022