



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A. (MD) .No.222 of 2020

in

CMP(MD) .Nos.3509 of 2020 & 2236 of 2021

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The Branch Manager,
The Oriental Insurance Company Limited,
Madurai.

... Appellant/2nd Respondent
Vs.

1.Hamitha Banu

2.Ramjith Begam

3.Akbar Ali

4.Johnsha Begam

5.Syyed Iburaamsha

6.Velani

... 1-5 Respondents/1-5 Petitioners

... 6th Respondent/1st Respondent

(6th Respondent remained Exparte before the Lower Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the decree and judgment made in M.C.O.P.No.57 of 2017, dated 14.10.2019, on the file of the Motor Accident Claims Tribunal cum Principal District Judge, Additional District Judge (FAC), Ramanathapuram.

For Appellant : Mr.A.Ilango

For R1, R2 & R4 : Mr.A.R.Kannappan

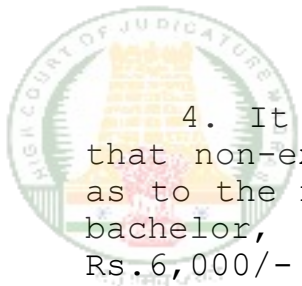
For R5 & R6 : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the liability and quantum of compensation awarded by the Motor Accident Claims Tribunal cum Principal District Judge, Additional District Judge (FAC), Ramanathapuram in M.C.O.P.No.57 of 2017, dated 14.10.2019.

2. The deceased said to have travelled as a pillion rider in a two wheeler driven by P.W.2/ Saravanan and the driver of the 6th respondent driven the car bearing Registration No. TN 69 J 9445 in a rash and negligent manner and dashed against the two wheeler. Due to the impact of the said accident, the son of the first respondent herein died. Hence, the respondents/claimants have filed the M.C.O.P.No.57 of 2017 before the Motor Accident Claims Tribunal cum Principal District Judge, Additional District Judge (FAC), Ramanathapuram, seeking compensation of Rs.10,00,000/-.

3. Before the Tribunal, P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked on the side of the respondents/claimants and R.Ws.1 and 2 were examined and Ex.R1 was marked on the side of the appellant/Insurance Company.



4. It is the specific case of the appellant/Insurance Company that non-examination of the driver of the car caused serious doubt as to the manner of the accident. Further, since the deceased being bachelor, 50% deduction ought to have been adopted. Besides Rs.6,000/- notional income is on the higher side.

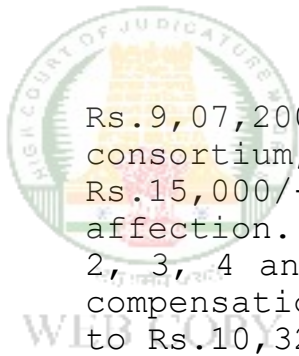
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5. Per contra, learned counsel appearing for the respondents/claim petitioners would contend that the first respondent is the widowed mother, the respondents 2 and 4 are the sisters of the deceased, 3 and 5 are the brothers of the deceased. Hence, necessary compensation in respect of loss of love and affection for the brothers and sisters ought to have been granted by the Tribunal.

6. On perusal of the evidence adduced by the claim petitioners side, I find that P.W.2 Saravanan is the person, who drove the two wheeler, in which the deceased was travelled as a pillion rider. He has clearly spoken about the manner of the accident that due to the rash and negligent driving on the part of the driver of the car the accident was occurred.

7. In view of the specific evidence of P.W.2 Saravanan, the rider of the two wheeler, I find that the evidence is clear and cogent and the Tribunal has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the car and accordingly fixed the liability on the part of the driver of the car insured with the appellant/Insurance Company. Therefore, this Court do not find any infirmity in the order passed by the Tribunal.

8. On the quantum of compensation, I find that the deceased, aged about '16' years said to have been working in Palani Vulcanising Shop and the Tribunal has fixed the notional income of the deceased as Rs.6,000/-, following the decision of the Hon'ble Supreme Court in the case of **Syed Sadiq vs United India Insurance Company Limited** reported in (2014) 2 SCC 735. Hence, the fixation of notional income at Rs.6,000/- is just and reasonable. Since the deceased is a bachelor, 50% of the income has to be deducted towards his personal expenses. As held by the Hon'ble Apex Court in the case of **National Insurance Company Limited vs. Pranay Sethi and others** reported in (2017) 16 SCC 680, the Tribunal ought to have awarded a sum of Rs.40,000/- towards loss of consortium, a sum of Rs.15,000/- towards funeral expenses and Rs.15,000/- towards love and affection. Hence, the pecuniary loss sustained to the claim petitioners is reassessed as under. By adding 40% of the income towards future prospects and deducting 50% of the income towards his personal expenses, the loss of income of the deceased comes to Rs.4,200/- (Rs.6,000/- + 2,400/- = 8400 - 50% = 4,200). By applying multiplier '18', for the age group of 16, as per the decision of the Hon'ble Supreme Court in the case of **Smt.Sarla Verma & Ors. Delhi Transport Corporation & Another** reported in 2009(2) TNMAC 1 (SC), this Court awards a sum of Rs.9,07,200/- (Rs.4,200/- x 12 x 18 =



Rs.9,07,200/-) towards loss of income, Rs.40,000/- towards loss of consortium, a sum of Rs.15,000/- towards funeral expenses, a sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards love and affection. Besides loss of love and affection, for the respondents 2, 3, 4 and 5, this Court awards Rs.10,000/- each. Accordingly, the compensation awarded by the Tribunal is reduced from Rs.12,80,000/- to Rs.10,32,200/-.

9. Pursuant to the interim order, the appellant/Insurance Company has deposited the entire award amount and the claimants 1, 2 and 4 are also permitted to withdraw 50% of their share. Hence, the claimants are permitted to withdraw their balance award amount as apportioned by the Tribunal on filing proper application before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount if any already deposited.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To
The Motor Accident Claims Tribunal cum
Principal District Judge,
Additional District Judge (FAC),
Ramanathapuram.

Copy to:

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

+1 CC to M/s.A.R.KANNAPPAN, Advocate (SR-6907[F] dated 17/02/2022)

+1 CC to M/s.A.ILANGO, Advocate (SR-6240[F] dated 15/02/2022)

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RK(10/03/2022) 3P 6C