



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.08.2022

Delivered On : 30.08.2022

WEB COPY

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.509 of 2022

The Branch Manager,
M/s. United India Insurance Co. Ltd.,
No.4, Promenade Road,
Cantonment, Trichy,
Trichy District.

... Appellant / 2nd Respondent
Vs.

1. (*) **Sundaram (Died)**

2. Muthulakshmi

3. Azhagammal

4. Karthika

5. Ayyappan

... Respondents 1 to 4 / Petitioners

... 5th Respondent / 1st Respondent

(*) (Death of R1 is recorded vide court order dated 13.04.2023 made in CMP(MD)No.4757 of 2023 in CMA(MD)No.509 of 2022)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 25.04.2019, made in M.A.C.O.P.No.531 of 2017, on the file of the Motor Accident Claims Tribunal (Principal District Court), Pudukkottai.

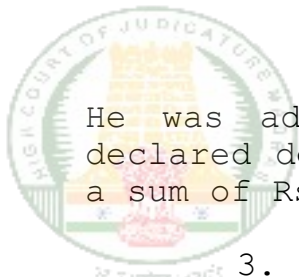
For Appellant	: Mr.B.Rajesh Saravanan
For Respondents	: Mrs.A.Banumathy for R1 to R4
	: No appearance for R5

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 25.04.2019, made in M.A.C.O.P.No.531 of 2017, on the file of the Motor Accident Claims Tribunal (Principal District Court), Pudukkottai. The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.A.C.O.P.No.531 of 2017, is as follows:

On 03.07.2017, at about 01.30 pm., the deceased - Karthikeyan, was riding a two wheeler, bearing Registration No.TN-55-AQ-4722, from Palpannai to PLA Roundana, near Thondaimaan nagar pirivu road, when he tried to avoid hitting a Cow, he lost his control, fell down and sustained fracture and multiple injuries.



He was admitted in Government Hospital, Pudukkottai and as declared dead. The petitioners are the dependents and they claimed a sum of Rs.20,00,000/- as compensation.

3. Brief substance of the counter filed by the second respondent in M.A.C.O.P.No.531 of 2017, is as follows:

The deceased was not having valid driving licence. The two wheeler used for carrying two pillion riders. The deceased was not wearing helmet. He drove the vehicle in a rash and negligent manner. He was the tortfeasor. The second respondent is not liable to pay any compensation. The age, income and profession are to be proved. The claim is exorbitant.

4. On the side of the claimants, 2 witnesses were examined and 5 documents were marked. On the side of the respondents, 1 witness was examined and 2 documents were marked. After considering both sides, the Tribunal has awarded a sum of Rs.11,80,640/- as compensation.

5. Against the order, the appellant has filed this appeal on the following grounds:-

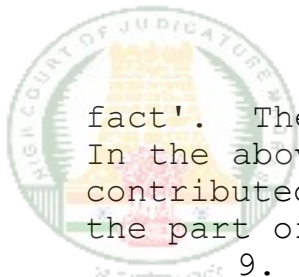
The Tribunal has erred in holding that the appellant is liable to pay compensation, without appreciating the evidence on record. The Tribunal has failed to consider that it was the deceased, who was responsible for the accident. The claim petition is filed under Section 166 of the Motor Vehicles Act and hence, the question of negligence ought to have been decided. The Tribunal has failed to consider that the policy conditions are violated. 2 Pillion riders travelled in a two wheeler. The deceased was not wearing helmet. Instead of deducting $\frac{1}{2}$, the Tribunal has deducted only $\frac{1}{4}$, which is wrong. The award is excessive.

6. On the side of the appellant, it is stated that three persons were travelled in a two wheeler and that negligence was on the part of the deceased. F.I.R was closed as 'mistake of fact'. LR's of a tortfeasor cannot claim compensation. There is no other vehicle involved in the accident. The Tribunal has fixed 80% liability on the Insurance Company, which is not correct. Under Section 166 of the M.V. Act, the claimants have to prove the negligence. Hence, the claim petition is not at all maintainable.

7. On the side of the respondents 1 to 4/ claimants, it is stated that the Tribunal has deducted 20% towards contributory negligence. Hence, the liability cannot be questioned by the appellant.

8. Admittedly, 3 persons travelled in a two wheeler, which is against the policy condition. Under Section 166 of M.V. Act, the claimants have to prove the liability. No other vehicle was involved in the occurrence. Driving Licence of the deceased was not

It is stated that the F.I.R was closed as 'mistake of



fact'. The deceased was not wearing helmet at the time of . In the above circumstances, it is decided that the deceased has also contributed towards the accident. Hence, 50% negligence is fixed on the part of the deceased.

9. On the side of the appellant, it is stated that the deceased was a Bachelor and 50% deduction ought to have been made in the income. But, the Tribunal deducted only 1/4th of the income towards own expenses. The Tribunal has deducted only 1/4th of the income towards personal expenses, which is wrong.

10. As per the dictum of the Hon'ble Supreme Court, in **Sarla Verma's** case, lesser deduction is possible only when all the claimants are entirely depending upon the income of the Bachelor and when the dependents include a widow mother. In this case, all the claimants elder to the deceased. The claimants 1 and 2 are not senior citizens. In the above circumstances, the decision of the Tribunal is wrong. 50% ought to have been deducted from the income towards the personal income of the deceased.

11. The Tribunal has fixed the monthly income as Rs.6,000/- per month. The date of accident is only 03.07.2017. Considering the year of accident, notional income is fixed at Rs.9,000/-. After deducting 50% towards his own expenses, the deceased might have contributed Rs.4,500/- for his family members. The age of the deceased was 20 years and after adding 40% towards future prospects, the income is calculated as Rs.6,300/-. Multiplier '18' is applicable and the claimants are entitled to Rs.13,60,800/- (Rs.6,300/- X 12 X 18=Rs.13,60,800/-) towards loss of income.

12. The Tribunal has awarded Rs.1,00,000/- towards loss of love and affection, Rs.15,000/- towards funeral expenses. As per the dictum of the Hon'ble Supreme Court in **Pranay Sethi's** case, the claimants are entitled to Rs.70,000/- towards conventional charges. The total is calculated as Rs.14,30,800/-. After deducting 50% towards contributory negligent, the claimants are entitled to Rs.7,15,400/- as compensation.

13. The first claimant, who is the father of the deceased, is entitled to Rs.2,00,000/-, the second claimant, who is the mother of the deceased, is entitled to Rs.4,15,400/- and the claimants 3 and 4, who are the sisters of the deceased, are entitled to Rs.50,000/- each, as compensation.

14. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.11,80,640/- to **Rs. 7,15,400/-**.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs. 7,15,400/- (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 2 to 4** / claimants are permitted to withdraw their share amount as apportioned by this Court with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any.

Sd/-

Assistant Registrar(CO)

()Amended as per the order of this court dated 13.04.2023 made in CMP(MD). 4757 of 2023 in CMA(MD)No.509 of 2022.**

Sd/-

Assistant Registrar(CS III)

// True Copy //

/07/2023

Sub Assistant Registrar(CO)

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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:

To be substituted to the order which is already despatched on 21.09.2022

1.The Principal District Judge,
Motor Accident Claims Tribunal Pudukkottai.

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

+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-42646[F] dated 02/09/2022)

C.M.A. (MD) No.509 of 2022

30.08.2022

RD(14/09/2022) 4P 5C

MK(12/07/2023) 4P 5C

<https://www.mhc.tn.gov.in/judis>