



C.M.A.(MD)No.362 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.09.2022

Delivered On : 14.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.362 of 2020

and

C.M.P.(MD)No.7696 of 2021

The New India Assurance Company

Limited, Puliur,

Karur District-639 001.

.. Appellant /2nd Respondent

Vs.

1. Jainabeevi

... 1st Respondent / Petitioner

2.S.Selvaraj,

... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgement and decree, in M.C.O.P.No.1080 of 2016, dated 08.11.2019, on the file of the Motor Accidents Claims Tribunal - Special District Court, Trichirappalli.

For Appellant

: Mr.J.S.Murali

For Respondents

: Mr.R.Anandharaj for R1

: Mrs.P.Kalaiyarasi Bharathi for R2



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the award, made in in M.C.O.P.No.1080 of 2016, dated 08.11.2019, on the file of the Motor Accidents Claims Tribunal - Special District Court, Trichirappalli. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No. 1080 of 2016, is as follows:

On 23.12.2014, when the deceased-Mohamed Ismail was travelling as a pillion rider in a motorcycle bearing Registration No.TN-59-AA-1271 along the Manapparai-Trichy road, at that time, a lorry bearing Registration No.TN-47-U-0849 was driven by its driver in a rash and negligent manner, dashed against the motorcycle and the deceased sustained injuries on the hip portion, he was given first aid in Manapparai Government Hospital, then, he was taken to Trichy Government Hospital and he died on his way to the Hospital. The deceased was aged about 24 years, he was earning Rs.50,000/- as an Acupuncture Doctor. The petitioner is his dependant and she claimed a sum of Rs.50,00,000/- as compensation.



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3. Brief substance of the counter filed by the second respondent, in M.C.O.P.No. 1080 of 2016, is as follows:

The age, income and profession of the deceased are all denied. The manner of accident was not properly narrated in the petition. The first respondent driver was not rash or negligent. It was the rider of the two wheeler, who was rash and negligent and without any signal, he applied the brakes and he invited the accident. Only because the lorry is a heavy vehicle, the police filed a case against the lorry driver. Contributory negligence is to be fixed on the rider of the two wheeler. There was no permit or fitness certificate for the lorry. The first respondent violated the policy conditions. The owner of the motorcycle and the insurance company of the motorcycle are necessary parties to the case. The claim is excessive.

4. On the side of the claimant, 2 witnesses were examined and 12 documents were marked. On the side of the respondents, 1 witness was examined and no document was marked. 1 document was marked as Ex.X1. After considering both sides, the Tribunal has awarded a sum of Rs.18,84,400/- as compensation to the claimant.



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5. Against the award, the second respondent / appellant has filed

this appeal on the following grounds:-

The Tribunal failed to consider that there was no valid fitness certificate or permit for the lorry. The officials from the R.T.O.office was examined as R.W.1 and a letter from the R.T.O. Office was marked as Ex.X1. The Tribunal failed to consider that the owner of the vehicle has committed breach of policy conditions. The Insurance Company ought to be exonerated from the liability. The Tribunal is wrong in fixing the monthly income of the deceased as Rs.12,000/-. The monthly income ought to have been fixed at Rs.6,500/-. The Tribunal ought to have applied multiplier '11', considering the age of the mother of the deceased. The Tribunal is wrong in applying multiplier '18'. The amount awarded under various heads are excessive.

6. On the side of the appellant, it is stated that the vehicle involved is a goods carrier. Fitness certificate of the vehicle expired on 28.10.2014 and the same was renewed only on 02.02.2015, there was a gap of 12 weeks and the accident has happened on 23.12.2014. At the time of accident, there was no fitness certificate for the vehicle and there was violation of policy conditions.



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7. On the side of the second respondent, it is stated that it is wrong to state that there was policy violation. A perusal of Ex.X1 reveals that there was no valid fitness certificate for the lorry, at the time of accident. There is violation of policy conditions. Since there is policy violation, it is decided that the appellant has to pay the compensation to the claimant at the first instance and the appellant is permitted to recover the same from the second respondent.

8. On the side of the appellant, it is stated that there is no document to prove the income and that the Tribunal is wrong in fixing the monthly income at Rs.12,000/- per month.

9. On the side of the first respondent, it is stated that the income fixed by the Tribunal was meagre. The deceased was an acupuncture Doctor and his educational certificate was marked as Ex.P10 to Ex.P12. The accident took place in the year 2014. Considering the date of accident and considering the qualification of the deceased, it is decided that the income fixed by the Tribunal is reasonable.



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10. On the side of the appellant, it is further stated that the deceased was a bachelor and that considering the age of the mother of the deceased, multiplier '11' ought to have been adopted, but, the Tribunal wrongly adopted multiplier '18'. A judgment of this Court reported in 2019-2-TNMAC- 65(DB) [National Insurance Co.Ltd., V. Nepalraj and others] is cited.

11. On the side of the first respondent, it is stated that the age of the deceased ought to have been taken into consideration in applying multiplier for Bachelor and the Tribunal is reasonable in fixing the multiplier '18'.

12. The law is now well settled. The age of the deceased is to be taken into consideration for fixing the multiplier. Hence, it is decided that multiplier '18' is applicable to this case.

13. For the reasons stated above, it is decided that the orders of the Tribunal is to be modified by directing the appellant to pay the compensation to the claimants and by permitting the appellant to recover the same from the owner of the vehicle.



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R. THARANI, J.

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To

1.The Special District Judge,
Motor Accidents Claims Tribunal
Trichirappalli.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.362 of 2020

14.10.2022