

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.09.2022

Pronounced on : 23 .09.2022

CORAM

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

C.M.A(MD)No.804 of 2019

and

C.M.P.(MD)No.10433 of 2019

The New India Insurance Company Limited,
Rep. by its Regional Manager,
Door No.161A, Keelaveli Street,
Madurai.

... Appellant/2nd Respondent

Vs

1.Karuppaiah
2.Valliyammal
3.Ilameshwari
4.Ilamkavi
5.Ilamathy

... Respondents 1 to 5/Petitioners

[Minor respondents 4 and 5 are declared as
major and guardianship of their father/next guardian,
1st respondent is discharged vide order dated 12.08.2022
made in C.M.P.(MD)Nos.7041 to 7044 of 2022]

6.Danabalan

...6th Respondent/ 1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree in M.C.O.P.No.95 of 2016, dated 25.05.2018 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.

For Appellant : Mr.J.S.Murali

For R1 to R4 : Mr.N.Madhava Govindan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.95 of 2016, on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Sivagangai, dated 25.05.2018. The appellant herein is the second respondent. The respondents 1 to 5 herein are the claimants. The second respondent herein is the first respondent in the claim petition.

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

On 31.05.2015 at about 11.30 a.m., while the deceased, Ilamaraja was travelling in a two wheeler bearing Registration No.TN-63-H-2423 keeping the left side of the road along the Madurai to Sivagangai Main Road, near

P.R. Granite, one Mini Lorry bearing Registration No.TN-59-BE-9789 came from the opposite direction in a rash and negligent manner and dashed against the two wheeler, in which, the said Ilamaraja sustained injuries and he was taken to Madurai Rajaji Government Hospital and he died on the same day. The deceased was an Engineering Graduate. He got job in Muscat for a salary of Rs.2,00,000/- per month and he applied for Visa. The petitioners claim a sum of Rs.30,00,000/- as compensation.

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

The manner of the accident, occupation and income of the deceased are all denied. The involvement of the lorry bearing Registration No.TN-59-BE-9789 is denied. There was no negligence on the part of the driver of the lorry. It was the deceased, who drove the vehicle in a rash and negligent manner and invited the accident. The amount claimed is excessive. There was no policy coverage in force. The policy conditions are violated. There was no valid driving license for the driver of the lorry. The second respondent is not liable to indemnify the first respondent.

4.Two (2) witnesses were examined and Sixteen (16) documents were marked on the side of the petitioners. There was no oral and documentary evidence on the side of the respondents. The Tribunal has awarded a sum of Rs.22,85,000/- as compensation.

5.Against the award, the appellant/second respondent preferred this appeal on the following grounds;

The monthly income fixed by the Tribunal is excessive. The Tribunal failed to deduct any amount towards income tax. The Tribunal ought to have fixed the monthly income only at Rs.10,000/- per month.

5.1.On the side of the appellant, it is further stated that the deceased was only an Engineering student. The Tribunal has fixed the monthly income at Rs.15,000/-, which is excessive. Rs.10,000/- per month will be the reasonable income. To Substantiate the claim, the appellant cited the Judgment of the Hon'ble Supreme Court reported in **2021 (2) TN MAC 790 (SC) in Meena Pawaia and others Vs. Ashraf Ali and others**, wherein, the Supreme Court fixed a monthly income at Rs.10,000/- p.m.

5.2. Another Judgment of this Court reported in **2017 (1) TN MAC 220 in Kandasamy and others Vs. G.R.Sampath and others**, is cited, wherein, for an engineering student, this Court has fixed the monthly income at Rs. 10,000/- p.m.

5.3. On the side of the second respondent, it is further stated that the deceased got a job in Muscat for a salary of Rs.2,00,000/- per month. He applied for the Visa and the accident has happened, when all the visa formalities are over. The passport copy was marked as Ex.P.12. The Provisional Certificate of the deceased was marked as Ex.P.13.

6. The Judgment of the Hon'ble Supreme Court cited by the appellant is not with regard to a technically qualified person. In the High Court Judgment cited by the appellant, the deceased was a student. Hence, both citations are not applicable to the facts of the present case. It is seen that the deceased was an engineering graduate and considering the date of accident and on considering the technical qualification of the deceased, it is decided that the notional income fixed by the Tribunal is reasonable.

7.It is also seen that the Tribunal has awarded Rs.22,50,000/- towards loss of income; Rs.5,000/- towards transport charges; Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, which are all reasonable. There is no sufficient reasons to interfere with the order of the Tribunal.

8.In the result, the Civil Miscellaneous Appeal is dismissed by confirming the Award, dated 25.05.2018, made in M.C.O.P.No.95 of 2016, on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Sivagangai. The appellant/Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P.No.95 of 2016, on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court), Sivagangai, less the amount already deposited, if any, along with accrued interest at the rate of 7.5% per annum from the date of claim petition till date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this Judgment.

9.On such deposit being made, the respondents/claimants are entitled to withdraw their share in the award amount, less the amount already withdrawn,

if any, with interest, as per the apportionment made by the Tribunal, by making necessary application before the Tribunal. No costs. Consequently, the connected Miscellaneous Petition is closed.

23.09.2022

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court, Sivagangai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

C.M.A(MD)No.804 of 2019

R.THARANI, J.

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**Pre - Delivery Judgment made in
C.M.A(MD)No.804 of 2019**

23.09.2022