



C.M.A(MD)No.541 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.09.2022

Pronounced on : 02.11.2022

CORAM

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

C.M.A(MD)No.541 of 2019

The New India Assurance Co.,Ltd.,
represented through its Branch Manager,
Regional Office,
CMTS Bhavan Building,
70 feet Road, Ellis Nagar,
Madurai.

...Appellant / 2nd respondent

Vs

1.O.Saravanan

2.O.Murugan

3.N.Suresh Kumar

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the decree and judgment dated 14.09.2018 made in M.C.O.P.No.52 of 2018 on the file of the Additional District Judge(FTC), Theni.

For Appellant : Mr.A.Ilango

For R1 & R2 : Mr.N.Sudhagar Nagaraj



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For R3 : No appearance

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JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.52 of 2018 on the file of the Motor Accident Claims Tribunal (Additional District Judge(FTC), Theni. The appellant herein is the second respondent, respondents 1 and 2 are claimants and the 3rd respondent is the first respondent in the claim petition.

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

On 21.02.2017 at about 8 pm, when the deceased Lakshmi was walking along the extreme left portion of the mud road of the Periyakulam to Madurai Main Road near Gandhi Nagar Hanuman Temple on Vadagarai, Periyakulam, a two wheeler bearing registration number TN 64 D 3961 was driven by its rider in a rash and negligent manner, dashed against her. She sustained injuries and was taken to the Government Hospital at Periyakulam. After getting first aid, she was taken to Government Medical College Hospital, Theni and later she took treatment at Madurai Rajaji Government Hospital, Madurai, where she succumbed to the injuries on 21.02.2017. The claimants are her dependants and they claimed a sum of Rs.10,00,000/- as



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compensation.

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

The manner of accident narrated by the petitioner is wrong. The vehicle was not involved in the accident. The rider of the two wheeler drove the vehicle in a slow and cautious manner. It was the deceased who suddenly crossed the road without noticing the traffic. The claim is excessive.

4. Two witnesses were examined and four documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.8,29,100/- as compensation.

5. Against the same, the appellant preferred this appeal on the following grounds:

The age of the deceased is mentioned as 50 years in the post mortem report. The age of the first respondent is 42 years, second respondent is 38 years. The age of the deceased ought to be more than 50 years. The husband



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of the deceased, one Ondiveeran deserted the deceased 15 years prior to the date of accident. He was not mentioned as a petitioner in the claim petition. The deceased was staying with her brother Marimuthu. The petitioners were not staying with the deceased. The Tribunal fixed the monthly income at Rs. 6,500/-, without any material evidence. The award is excessive.

6.In the First Information Report, the complainant name is mentioned as Marimuthu, who is the brother of the deceased and in the complaint it was mentioned that the husband of the deceased was separated from her and that the deceased was having two sons.

7.On the side of the appellant it is stated that the husband of the deceased was missing and his whereabouts are not known. The facts were suppressed in the complaint. The petitioners are not the dependants of the deceased and the deceased was living with her brother.

8.On the side of the appellant, a judgment of this Court reported in **2018 (2) TNMAC 760 (DB)** in the case of **New India Assurance Co.Ltd., Vs D.Neela**, is cited, wherein this Court has held that,



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"18. There is nothing on record to show that the brothers of the deceased were dependant on him. However, the Parents of the deceased had died after the accident, therefore they would be entitled to a certain amount as Compensation if they were alive.

20. The Award of the Compensation under the Motor Vehicles Act cannot be strictly governed by the Rules of Succession under the Hindu Succession Act, as the same relates to the dependency.

... As already stated that there is nothing on record to show that the brothers, namely the respondents 6,7 & 8 were dependants on the deceased."

9.On the side of the respondents 1 and 2, it is stated that the respondents 1 and 2 are sons of the deceased. The whereabouts of the father was not known. In the counter filed by the appellant before the Tribunal, no defence was taken regarding the capacity of the petitioners therein. The appellant cannot raise a new plea at the stage of appeal.

10.A perusal of the record reveals that the appellant has not raised any question regarding the capacity of the claimants before the Tribunal. The



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appellant is trying to create a new case at the stage of appeal.

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11. On the side of the appellant, it is stated that in the post mortem report, the age of the deceased was mentioned as 50 years. The age of the first petitioner is 42 years and the age of the second petitioner is 38 years and there is no possibility of the deceased to be their mother.

12. The age of the deceased was mentioned as 60 years in the petition. The age stated in the post mortem report cannot be a conclusive proof. The Tribunal wrongly fixed the age of the deceased as 50 years and hence it is decided that the age of the deceased was 60 years. It is stated that the husband of the deceased left her some 15 years prior to the date of accident. It is obvious that he is not a dependant of the deceased, hence it is decided that he is not entitled to any compensation.

13. The Tribunal has fixed the income as Rs.6,500/-. There is no proof that the deceased was an employed person. Hence the income is fixed at Rs. 6,000/- per month. The future prospects is to be added at the ratio of 10% ($6000 + 10\% \text{ of } 6000 = 6600$). 1/3 is deducted for the personal expense of the



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deceased $[6600-2200(6600/3)= 4400]$. Since the deceased is aged about 60 years, multiplier 9 is applicable. Hence the loss of income is calculated as Rs. 4,75,200/- $(4400 \times 12 \times 9)$.

14.The Tribunal has awarded Rs.5,000/- towards transport expenses, Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.50,000/- towards loss of love and affection, which are not reasonable. As per the dictum of the Hon'ble Supreme Court in Pranay Sethi case, the claimants are entitled to Rs.70,000/- towards conventional charges.

15.Including the conventional charges, the claimants are entitled to Rs. 5,45,200/- $(4,75,200 + 70,000)$ as compensation.

16.Accordingly, this Civil Miscellaneous Appeal is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.8,29,100/- to Rs.5,45,200/- (Rupees Five Lakhs Forty Five Thousand and Two Hundred only) which shall carry interest at the rate of 7.5% per annum.



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(ii) The appellant /Insurance company, is directed to deposit the entire compensation of Rs.5,45,200/- (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 M.C.O.P.No.52 of 2018 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.

(iii) On such deposit being made by the appellant /insurance company, the respondents 1 and 2/ claimants are permitted to withdraw their share of Rs.2,72,600/- (Rupees Two Lakhs Seventy Two Thousand and Six Hundred only) each, along with proportionate interest at the rate of 7.5% per annum. No costs.

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Index: Yes / No
Internet : Yes / No

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To

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



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