



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.1132 of 2021

1.Lyla Begam

2.Jenib Nisha

3.Naina Mohamed

Appellants/Claimants

Vs

1.Jee Perez

2.Iffco Tokio General Insurance Company Limited,
No.28, I and II Floor,
North Usman Road,
T.Nagar,
Chennai - 600 017.

Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP No.728 of 2008, on the file of the Motor Accident Claims Tribunal, (IV Additional District Court), Tirunelveli, dated 30.11.2020.

For Appellants :Mr.T.Selvakumaran

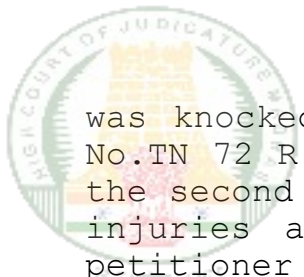
For R1 :No appearance

For R2 :Mr.V.Sakthivel

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment and decree made in MCOP No.728 of 2008, on the file of the Motor Accident Claims Tribunal, (IV Additional District Court), Tirunelveli dated 30.11.2020.

2.The case of the claimants is that on 14.05.2008 at about 7.30 p.m, when the deceased Mohamed Mytheen was riding a motor cycle bearing Registration No.TN 72 C 9077 from Nanguneri to Valliyoor, he



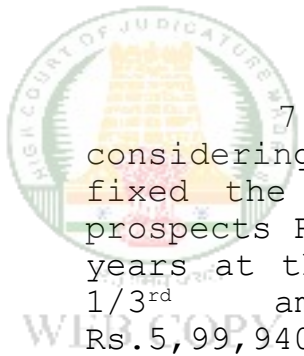
was knocked down by a rear portion of a lorry bearing Registration No.TN 72 R 5112, belonging to the first respondent and insured with the second respondent, due to which, the deceased sustained grievous injuries all over the body. Immediately after the accident, the petitioner was taken to Sakthi Hospital, Vannarpettai, where, he was declared dead. Alleging that the accident had taken place due to the reason that the said lorry was parked by fully covered with tarpaulin and not even switched on the park lamp or indication, the claim petition has been filed by the wife and children of the deceased Mohamed Mytheen, claiming compensation of Rs.10,00,000/-.

3.Though the claim petition has been filed under Section 163(A) of Motor Vehicles Act, subsequently, Interlocutory Application has been filed for amendment of the Act, which was allowed and the same was challenged in CRP(PD) No.2270 of 2010, which was also disposed of. Thereafter, the claim petition appears to have been taken up and disposed of, vide order, dated 30.11.2020.

4.The first and second respondents contested the claim petition on the ground that the accident was happened only due to the rash and negligence of the deceased alone. The lorry was parked on the left side of the road only. It is not the case of the claimants that the accident had happened due to the rash and negligent driving of the lorry driver. Since the deceased himself dashed against the stationed lorry, the first respondent is not liable to pay the compensation. On the side of the Insurance company, a counter affidavit has been filed stating that the accident was taken place due to the rash and negligent driving of the driver of the lorry, whereas, it was happened only due to the negligence of the deceased alone. Also, a criminal case has been registered and also pending against the deceased alone. Hence, the claimants are not entitled to claim any compensation. Hence, the claim petition has to be dismissed.

5. Before the Tribunal, on the side of the claimants, two witnesses have been examined and two documents have been marked. On the side of the second respondent, one witness has been examined and five documents have been marked.

6. The Tribunal after considering the evidence and materials placed on record, has held that the accident had taken place not only due to the rash and negligence of the deceased but also it was due to the fact that the lorry has been parked in the middle of the road and even without any signal. Hence, the Tribunal has fixed the liability as 25% on the deceased and 75% on the driver and insurer of the Lorry bearing Registration No. TN 72 R 5112.



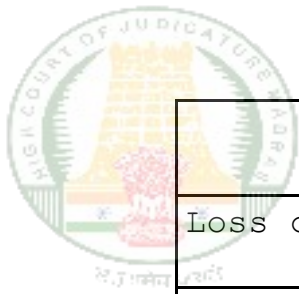
7. Insofar as the quantum of compensation is concerned, considering the materials available on record, the Tribunal had fixed the monthly income of the deceased at Rs.4,000/-, future prospects Rs.1,000/- and considering the age of the deceased i.e., 40 years at the time of accident, applied multiplier '15', deducted 1/3rd amount towards his personal expenses and awarded Rs.5,99,940/- as loss of income. Apart from that, the Tribunal has awarded Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, Rs.40,000/- towards loss of consortium, totalling to a sum of Rs.6,69,940/- as compensation, out of which, the Insurance company was directed to pay the 75% of the compensation amount, i.e., Rs.5,02,455/-. Challenging the quantum of compensation, the claimants are before this Court.

8. The learned counsel for the appellants/claimants submits that the accident is of the year 2008 and due to pendency of Civil Revision Petition, the Insurance Company is in a position to pay interest for so many years. He further submits that though the deceased was working as fisherman and was earning a sum of Rs.8,000/- per month, the Tribunal failed to consider the same and fixed only Rs.4,000/- as monthly income. In order to substantiate his contention, the learned counsel is relying upon the judgment in **Syed Sadiq, etc, Vs, Divisional Manager, United India Insurance Company Ltd**, reported in **2014 (1) TNMAC (SC)**.

9. The learned counsel for the respondents submits that the compensation awarded by the Tribunal is reasonable and no interference is required and prays to dismiss the appeal.

10. Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the respondents and perused the materials placed on record.

11. Considering the submissions made by either side and also taking into consideration the fact that the accident is of the year 2008 and also the pendency of Civil Revision Petition, I feel that the compensation awarded towards loss of income needs to be enhanced. Hence, the notional income of the deceased is fixed at Rs.6,000/-, adding future prospects Rs.1,500/-, and less 1/3 towards his personal expenses and adopting the multiplier 15, as per **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (2) TNMAC (1) (SC)**, Rs.5,000 x 12 x 15 = 9,00,000/- is awarded towards loss of income. The compensation awarded under the other heads are kept intact.



HEADS	AWARD GIVEN BY THE TRIBUNAL	MODIFIED BY THIS COURT
Loss of income	Rs.5,99,940/-	Rs.9,00,000/-
Loss of estate	Rs.15,000/-	Rs.15,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Loss of consortium	Rs.40,000/-	Rs.40,000 x 3= Rs.1,20,000/-
Total	Rs.6,69,940/-	Rs.10,50,000/-

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent /Insurance Company is directed to deposit 75% of the enhanced compensation amount of Rs.10,50,000/-, i.e Rs.7,87,500/-, less the amount already deposited within a period of four weeks from the date of receipt of a copy of this order. Out of the total compensation of Rs.7,87,500/-, the first claimant, who is the wife of the deceased is entitled to Rs.5,87,500/- and the second and third claimants, who are the children of the deceased are entitled to Rs.1,00,000/- each. The claimants are permitted to withdraw their share of compensation amount along with accrued interest and costs, without filing any formal application seeking permission. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Motor Accident Claims Tribunal, (IV Additional District Court),

Tirunelveli

2.The Record Keeper,

Vernacular Section,

Madurai Bench of Madras High Court,

Madurai.(2 copies)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-6412[F] dated 16/02/2022)

+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-5878[F] dated 14/02/2022)

C.M.A(MD)No.1132 of 2021

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RK(25/04/2022) 4P 6C

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