



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CMA(MD)No.539 of 2018 &

CMP(MD)No.6328 of 2018

WEB COPY

The Divisional Manager,
The Royal Sundaram Alliance Insurance Co. Ltd.,
Bus Plaza, 3rd Floor,
No.5G-Lawsons Road,
Cantonment, Trichy 620 001.

... Appellant/ Respondent -3

vs.

1.B.Selvarani

2.Minor Ramaya

... Respondents / Petitioners

(Minor 2nd respondent represented by her mother
first respondent herein)

3.S.Baskar

4.C.Thiyagarajan

... Respondents/ Respondents 1 & 2

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decreetal order dated 02.06.2016 in MCOP.No.1034/2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Thanjavur.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents: Mr.K.K.Senthil for R1 and R2
No appearance for R3 and R4

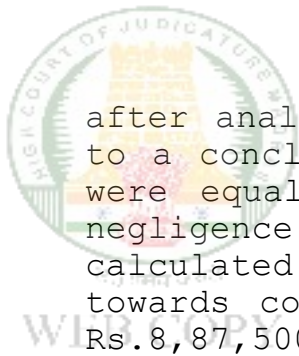
J U D G M E N T

The appellant filed this appeal against the Judgment and Decree dated 02.06.2016 in MCOP.No.1034/2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Thanjavur.

2. On 09.09.2011, the deceased Karthikeyan was riding a motorcycle bearing Registration No.TN 49 AJ 7336 with his friend Balaji as pillion rider along Trichy - Thanjavur main road. At about 02.30 pm, a lorry bearing Registration No.TN 46 E 0672 driven by its driver in a rash and negligent manner was stopped by its driver by applying sudden brake, as a result of which, the motorcycle hit the lorry and both Karthikeyan and Balaji were thrown away from the motorcycle. Karthikeyan sustained severe injuries and died in the Hospital.

3. The claimants, who are the mother and sister of the deceased Karthikeyan filed MCOP.No.1034/2012 claiming compensation for the demise of Karthikeyan. The father of the deceased Karthikeyan was

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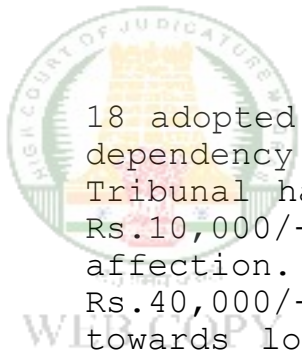
after analysing the oral and documentary evidences on record, came to a conclusion that the lorry driver and the deceased Karthikeyan were equally responsible for the accident and fixed contributory negligence on the deceased Karthikeyan at 50%. The Tribunal calculated the total award at Rs.17,75,000/- and after deducting 50% towards contributory negligence of the deceased, awarded a sum of Rs.8,87,500/- together with interest at the rate of 9% per annum, as compensation. The Tribunal directed the appellant herein to pay the compensation to the mother, sister and father of the deceased (arrayed as claimants and first respondent before the Tribunal). Challenging the said order, the appellant has preferred this appeal.

4. The learned counsel for the appellant would submit that the deceased Karthikeyan had ridden the motorcycle in a rash and negligent manner and dashed against the stationary lorry parked on the service road. Hence, the deceased Karthikeyan was solely responsible for the accident and 100% negligence ought to be fixed on his part. The monthly notional income fixed by the Tribunal at Rs.10,000/- is very high. Further the Tribunal added 50% towards the future prospects of the deceased which is unsustainable.

5. The learned counsel for the respondents 1 and 2 submitted that 100% negligence should be fixed on the part of the driver of the lorry since he applied sudden brake, owing to which, the motorcycle ridden by the deceased Karthikeyan hit the lorry. He further submitted that the Tribunal after taking into consideration all the materials on record, awarded just compensation and the same need not be disturbed.

6. Heard both sides and perused the materials available on record.

7. A perusal of the orders passed by the Tribunal shows that the Tribunal after detailed consideration of the facts and circumstances and also relevant Judgments, had come to a conclusion that the driver of the lorry and the deceased Karthikeyan were equally responsible for the accident. This Court also, after perusing the oral and documentary evidences, concurs with the decision of the Tribunal, insofar as fixing the liability aspect is concerned. As far as quantum of compensation is concerned, the deceased Karthikeyan was aged 21 years and was studying MCA II year on the date of the accident. The accident took place in the year 2011. Hence, the Tribunal was justified in fixing the monthly notional income as Rs.10,000/-. However, as per the decision of the Hon'ble Supreme Court in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, only 40% should be added towards the future prospects of the deceased. Therefore, Rs.10,000/- + Rs.4,000/- (40% of Rs.10,000/-) = Rs.14,000/-. The deceased was a bachelor on the date of the accident and hence, 50% should be deducted towards his personal expenses. Hence, it would be Rs.14,000/- x 1/2 deduction = Rs.7,000/-. The multiplier



18 adopted by the Tribunal is hereby confirmed. Therefore, loss of dependency would come to Rs.7,000/- x 12 x 18 = Rs.15,12,000/-. The Tribunal had awarded Rs.50,000/- each to the father and mother and Rs.10,000/- to the sister as compensation towards loss of love and affection. This Court is of the considered opinion that awarding Rs.40,000/- each to the father, mother and sister of the deceased towards loss of love and affection would be just and reasonable. Further the rate of interest fixed by the Tribunal at 9% per annum is on the higher side. This Court is inclined to reduce the same to 7.5% per annum. All the other heads awarded by the Tribunal are just and reasonable and hence they are hereby confirmed. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this court
1.	Loss of dependency	Rs.15,12,000/-
2.	Loss of love and affection to the respondents 1 to 3	Rs.1,20,000/-
3.	Funeral Expenses	Rs.25,000/-
4.	Loss of Estate	Rs.10,000/-
5.	Transport Expenses	Rs.10,000/-
Total		Rs.16,77,000/-
Contributory Negligence on the part of the deceased Karthikeyan (50%)		Rs.8,38,500/-
Total compensation for respondents 1 to 3		Rs.8,38,500/-

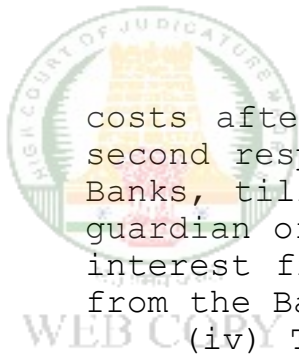
8. The learned counsel for the appellant would submit that the appellant/Insurance Company has already deposited the entire compensation amount to the credit of MCOP.No.1034/2012 on the file of the Motor Accidents Claims Tribunal, Special District Court, Thanjavur.

9. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.8,87,500/- to Rs.8,38,500/- together with interest at the rate of 7.5% per annum.

(iii) The respondents 1 and 3 are entitled for 40% compensation each. The second respondent is entitled for 20% compensation. Since the amount has already been deposited by the appellant/Insurance Company, the respondents 1 and 3 herein are at liberty to withdraw the same along with proportionate interest and



costs after following due process of law. The share of the minor second respondent shall be deposited in any one of the nationalized Banks, till she attains majority. The first respondent / mother and guardian of the minor second respondent is permitted to withdraw the interest from the above said deposit, once in three months directly from the Bank and utilize the same for the welfare of the child.

(iv) The appellant/Insurance Company is at liberty to withdraw the amount that is in excess of the amount awarded by this Court together with proportionate interests and costs after following due process of law.

Sd/-
Assistant Registrar()

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/ /2022
Sub Assistant Registrar(CS)

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To

The Motor Accident Claims Tribunal,
Special District Court,
Thanjavur.

Copy to:

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-2245[F] dated 24/01/2022)

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-2445[F] dated 25/01/2022)

CMA(MD)No.539 of 2018
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MK/28.02.2022/4P/6C