



WEB COPY

C.M.A(MD)No.947 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.947 of 2017

and

C.M.P(MD) .No.9997 of 2017

The Branch Manager,
The Oriental Insurance Company Limited,
1st Floor, PSHM Shopping Complex,
Kulavikonam, Nedumangad,
Trivandrum,
Kerala-695 541.

:Appellant/2nd Respondent

.vs.

1.Amalapushpa Thiresh

2.Kilbert Francis

3.Saji Thran

4.Benedict

5.The Branch Manager,
United India Insurance Company Limited,
Micro Office,
No.1/45, B6, 2nd Floor,
JPC Building, Colachel Road,
Monday Market,
Kanyakumari-629 802

: Respondents

(3rd and 4th respondents are remained exparte before the lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award of Rs.8,90,000/- (Rupees Eight Lakhs Ninety Thousand Only) passed in M.C.O.P.No.958 of 2014 dated 24.02.2016, on the file of the Motor Accidents Claims Tribunal Cum II Additional District & Sessions Judge, Tirunelveli.

For Appellant	:	Mr.A.Ilango
For Respondents	:	Mr.A.Shajahan for R5 No appearance for R1 to R4

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award and decree dated 24.02.2016 passed in M.C.O.P.No.958 of 2014 on the file of the Motor Accident Claims Tribunal cum II Additional District & Sessions Judge, Tirunelveli.



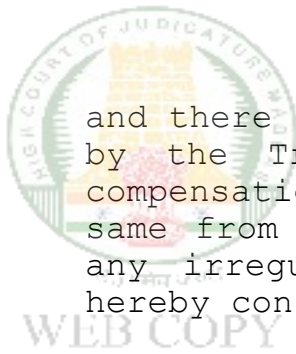
2. The case of the claimants before the Tribunal is that the deceased, by name, Ajai Franklin was a student; at the time of accident, he was studying IX Standard. On 05.05.2014, at 12.00 noon, while he was travelling along with three others in a Van belonging to the third respondent bearing Registration No.TN-74-U-4743 from Marthandam to Thiruvananthapuram; at that time, the bus bearing Registration No.KL-01-AM-3145 belonging to the 1st respondent and insured with the second respondent was driven by his driver in a rash and negligent manner and dashed against the Van, as a result of which, the the deceased Ajai Franklin along with others sustained grievous injuries. Immediately, he was taken to the Government Hospital, where he succumbed to the injuries on 14.05.2015. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the first respondent vehicle, the claim petition has been filed by the parents of the deceased claiming compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only).

3. Before the Tribunal, the third and the fourth respondents, who are the owner and the driver of the offending vehicle respectively, remained ex-parte. The Insurance Company contested the claim petition on the ground that at the time of accident, the first respondent's vehicle has no valid permit to ply in Tamilnadu and no negligence could be fixed on the part of the driver of the first respondent and they have also disputed the notional income of the deceased.

4. The Tribunal, after considering the materials available on record, held that the accident had taken place due to the rash and negligent driving of the driver of the first respondent and fixed the liability on the first respondent/owner of the vehicle, however, ordered pay and recovery.

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

6. Based upon Ex.P1/Certified copy of FIR and the evidence of P.W.2, the Tribunal has rightly come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the first respondent's bus. The Tribunal also considering the material available on record rightly, fixed the notional income of the deceased as Rs.5,000/- per month and following the judgments of the Hon'ble Apex Court in the case of **National Insurance Company Limited vs. Pranay Sethi and others reported in (2017) 16 SCC 680 and Smt. Sarla Varma and other vs. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC).**, and correctly by applying the multiplier '15', awarded the compensation of Rs.8,65,000/- (Rupees Eight Lakhs and Sixty Five Thousand only) as loss of income and hence, on the point of quantum of compensation awarded by the Tribunal, the same is fair and proper



and there is no reason to interfere with the same. The orders passed by the Tribunal directing the Insurance Company to 'pay' the compensation to the respondents/claimants and then 'recover' the same from the owner of the first respondent, does not suffer from any irregularity or illegality and therefore, the same is also hereby confirmed.

7. In the result,

(i) This Civil Miscellaneous Appeal is dismissed;

(ii) It is represented by the learned counsel appearing for the present appellant - Insurance Company that the Insurance company has deposited the entire award amount and permitted to recover from the owner.

(iii) The first and second respondents/claimants are permitted to withdraw the entire compensation awarded to them after following the due process of law;

(iv) There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

tta

To :

1.The Motor Accidents Claims

Tribunal Cum II Additional District & Sessions Judge,
Tirunelveli.

COPY TO:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.A.SHAJAHAN, Advocate (SR-15915[F] dated 01/04/2022)

+1 CC to M/s.A.ILANGO, Advocate (SR-16249[F] dated 04/04/2022)

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RD(18.05.2022) 3P 6C