



WEB COPY

C.M.A.No.1357 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1357 of 2023

1.Ramachandiran
2.Papathi
3.Renuga
4.Revathi

...Appellants

Vs.

1.Murugesan
2.V.N.Sachithanandam
3.M.Ramesh
4.The Branch Manager,
Oriental Insurance Company Limited,
G.S.Oorali Complex, Sankari Main Road,
Opp to State Bank of India, Pallipalayam,
Tamil nadu.

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 15.11.2019 in MACTOP.No.71 of 2018 on the file of the Motor Accident Claims Tribunal, Presiding Officer, District Court, Karaikal.

For Appellant : Mr.T.Ananthasekar

For Respondents : Mr.S.Senthilkumar for R4



J U D G M E N T

WEB COPY The Civil Miscellaneous Appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 15.11.2019 in MACTOP.No.71 of 2018 on the file of the Motor Accident Claims Tribunal, Presiding Officer, District Court, Karaikal.

2. The appellants filed a claim petition claiming a sum of Rs.38,00,000/- as compensation for the death of one Vignesh, who died in the accident that took place on 29.11.2017. According to the appellants, on the date of accident i.e., on 29.11.2017, while the deceased Vignesh was riding his motorcycle proceeding from Melakasakudy main road near Pillaitheeruvassal med dam, the lorry belonging to the respondents 2 and 3, which came behind the motorcycle in the same direction, driven by the first respondent, in a rash and negligent manner, dashed against the motorcycle and caused the accident; and due to the accident, the deceased Vignesh sustained fatal injuries and died on the spot; and therefore, they were entitled to a claim of Rs.38,00,000/-.

3. The respondents 1 to 3 are the driver and owners of the lorry bearing registration No.TN 33 AF 9994 respectively and they remained ex-parte before the Tribunal.



4. The fourth respondent/Insurance Company filed a counter statement, denying the averments made in the claim petition and stated that the deceased did not possess valid and effecting driving license at the time of accident and he was under the influence of alcohol, which is in violation of terms and conditions of the policy. The deceased rode the motorcycle in a rash and negligent manner and invited the accident. At the time of accident, the deceased respondent was under the influence of alcohol. Therefore, the fourth respondent was not liable to pay any compensation to the appellants. In any event, the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked 21 documents as Exs.P1 to P21. On the side of the respondents, one Kalvimaran, Motor Vehicle Inspector was examined as R.W.1 and marked Accident Inspection Report as Ex.R.1.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the first respondent, the driver of the lorry bearing registration No. TN 33 AF 9994 belonging to the respondents 2 and 3 and directed the fourth



respondent/Insurance Company being insurer of the said lorry to pay a sum of Rs.20,44,400/- as compensation to the appellants.

7. The learned counsel for the appellants submitted that the amount of compensation awarded by the Tribunal is meagre and the Tribunal ought to have taken the notional income of the deceased at Rs.12,000/- per month as it was established from the evidence of P.W.1, the deceased was a student pursuing 1st year in M.A.English Literature. The learned counsel, in support of his submissions, relied on the judgment of this Court in C.M.A.No.3320 of 2019, that in similar circumstances, this Court had taken the notional income at Rs.15,000/- per month for the accident which took place in the year 2016. The learned counsel further submitted that the amount of compensation awarded by the Tribunal under the other heads are justified and hence, he prayed for enhancement of compensation by enhancing the compensation under the head of loss of income.

8. Per contra, the learned counsel for the fourth respondent/ Insurance Company submitted that though they have not filed any appeal challenging the award of the Tribunal, the compensation awarded by the Tribunal is excessive. The deceased is a guilty of contributory negligence as he did not have a valid



driving license, at the time of the accident. Further, the Tribunal has awarded Rs.2 lakhs under the head loss of love and affection whereas the appellants were only four in number. The learned counsel further submitted that merely because this Court had considered the notional income as Rs.15,000/- in another case, the same cannot be applied in the instant case, since the fixation of notional income would depend upon the facts and circumstances of the case. The learned counsel therefore submitted that the appeal may be dismissed.

9. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the fourth respondent/Insurance Company and perused all the materials available on record.

10. This Court finds that from the evidence of P.W.1, that the deceased was a student studying 1st year in M.A.English Literature. For an accident that took place in the year 2016, a Division Bench of this Court had fixed the notional income at Rs.15,000/- per month for a post graduate student. However, the said income was fixed in the facts and circumstances of that case and that cannot be applied as a universal formula. The notional income of Rs.12,000/- per month fixed by the Tribunal after taking into consideration the judgment of the Hon'ble Supreme Court in the case of *Sunita Tokas & another Vs. New*



India Insurance Company Limited and another reported in ***CDJ 2019 SC***

922 and considering the evidence on record and the facts and circumstances of the case, is justified. The amount of compensation awarded by the Tribunal under the other heads are also just and reasonable and hence, the same are hereby confirmed. Therefore, this Court finds that the award passed by the Tribunal is just and reasonable and there is no reason to interfere with the award passed by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.20,44,400/- awarded by the Tribunal as compensation to the appellants along with interest and costs is confirmed. The fourth respondent /Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

18.07.2023

Index: Yes/No

Internet: Yes/No

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To

- 1.The Motor Accident Claims Tribunal /
Presiding Officer, District Court, Karaikal.
- 2.The Section Officer
VR Section, High Court of Madras.



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SUNDER MOHAN,J.

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