



C.M.A.No.1486 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.11.2023

CORAM:

MR.JUSTICE N.SESHASAYEE

C.M.A.No.1486 of 2022
and C.M.P.No.11251 of 2022

The New India Assurance Co. Ltd.
Sethu Krishna Trade Centre, 2nd Floor
Trichy Main Road, Gugai, Salem

... Appellant

Vs.

1.Santhi
2.Kumaresan
3.Thangamani
4.Selvakumar
5.Venkatesan

... Respondents

PRAYER: This Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 1st December 2021 passed in M.C.O.P.No.1357 of 2019, by the Motor Accidents Claims Tribunal, Special District Court (MCOP), Salem.

For appellant : Mrs.C.Bhuvanasundari

For respondents : Mr.M.R.Thangavel - R1 to R3
R4 - D/w vide order dt.05.10.2023



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JUDGMENT

In a road accident that had taken place on 02.04.2018, at around 3.00 a.m., a certain Rathinam was riding his motor cycle bearing Registration No.TN-28-AZ-4277 is alleged to have been hit from behind by a rashly driven car bearing Registration No.TN-07-BM-5253. Claiming compensation for the negligence of the driver of the car, who was later examined in this case as R.W.2, the dependents of the victim moved the Motor Accidents Claims Tribunal with M.C.O.P.No.1357 of 2019. The victim was stated to be 48 years old and was earning Rs.15,000/- per month. This award is under challenge at the instance of the Insurance Company of the car.

2.Learned counsel for the appellant submitted that it is an admitted fact that the rider of the motor cycle, the victim to be, was riding on the wrong lane from the opposite direction which permits only one way traffic. Admittedly, the accident had happened on a four lane road with a median running in the middle. The rider of the motor cycle had no business to come in the opposite direction on a lane which is not intended for him. So far as the driver of the car is concerned, he may not even expect a motorcycle on the first lane



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which is intended for speeding vehicles. Literally, the rider of a motor cycle has committed suicide by opting to travel on the wrong side, violating all traffic rules. The Tribunal had applied 163A but had reckoned Rs.15,000/- as monthly income which runs counter to 163A.

3.Learned counsel for the respondent / claimant submitted that the Tribunal had negated the case of the claimants and apportioned negligence evenly between the victim of the accident and the driver of the car evenly at 50% each. If so reckoned, then it is not a case of 163A, since under this provision negligence need not be established. If so, the Tribunal ought to have invoked Section 166 and awarded compensation accordingly.

4.This Court carefully weighed the rival submissions.

5.The case of the claimants is that the car came from behind to knock the motor cycle off, leading to the death of the rider of the motor cycle, whereas the facts as established before the Tribunal which this Court now confirms is that the motor cycle was actually coming opposite to the car in a wrong lane which is not intended for it in an Express Highway. At the first level, it



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is a plain irresponsibility of the victim and as rightly argued by the learned counsel for the appellant, it was mere a suicidal riding. But the larger issue is who had the last opportunity to avoid an accident. Apparently, there is no independent witness to support it. Here, the Tribunal had found fault with the driver essentially because he appeared to have ignored his obligation to intimate the police about the accident and let the V.A.O. file the F.I.R. Accordingly, the Tribunal had distributed the negligence evenly between both the parties.

6.Turning to the quantum of compensation, this Court has difficulty in appreciating whether the Tribunal had awarded compensation under Section 166 or under 163A. Though, the tenor of the award indicates it is more under Section 166 for it reckoned the monthly income adopted multiplier made necessary deductions but ignored future prospects of the victim.

7.In the absence of any material evidence, it would be appropriate to reckon the monthly income of the victim at Rs.12,000/- notionally. To which another 25% is added towards future prospects as the victim was 48 years at the relevant time and applying a multiplier of 13 and deducting 1/3rd



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towards the personal expenditure of the victim, the net loss of dependency will be Rs.15,16,000/-. However, given the nature of the accident where the victim of the accident was predominantly at fault, this Court fixes his negligence at 60%. Therefore, the net value of loss of dependency is reduced from Rs.7,80,000/- to Rs.6,24,000/-. This Court retains the other conventional heads of compensation and arrive at Rs.6,24,000/- + Rs.1,25,000/- = Rs.7,49,000/-.

8.In fine, this appeal is partially allowed,

i) This Court quantifies the compensation at Rs.7,49,000/- (Rupees Seven Lakhs Forty Nine Thousand only).

(ii) The appellant is directed to deposit the compensation amount of Rs.7,49,000/- awarded by this Court with 7.5% interest throughout to the credit of M.C.O.P.No.1357 of 2019, on the file of Motor Accident Claims Tribunal (Special District Court (MCOP) Salem, within a period of six (6) weeks from the date of receipt of a copy of this order. Less any amount already deposited.

(iii) The present amount as determined will be is directed to be divided in the same ratio, in which the Tribunal had directed apportionment of the



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award among the claimants.

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(iv) On such deposit, the respondents / claimants are entitled to withdraw the entire compensation as per existing rules on filing necessary application before the Tribunal.

(v) Excess court fee paid, if any, shall be refunded to the appellant / The New India Assurance Company Ltd.,

(vi) Consequently, the connected miscellaneous petition is closed.

(vii) There is no order as to costs in this appeal.

08.11.2023

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Index : Yes / No
Neutral Citation

To.

The Motor Accidents Claims Tribunal
Special District Court (MCOP)
Salem

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