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C.M.A.No.555 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

**CORAM
THE HON'BLE MR. JUSTICE P.VELMURUGAN**

**C.M.A.No.555 of 2018
and
C.M.P.No.4874 of 2018**

Shriram General Insurance Co.Ltd.,
II Floor, City Centre Complex,
No.66, Thirumalai Pillai Street,
Near Vani Mahal,
T.Nagar, Chennai – 600 017.

... Appellant

vs.

1.Sarasu
2.Arul Kannan
3.Anusudha
4.Thangam
5.Lakshmi
6.Parasuraman
7.Sournam
8.Kollunjiappan
9.M.Thirumavalavan

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 31st day of July, 2017 made in M.C.O.P.No.153 of 2010 on the file of the Motor Accident Claims Tribunal (Prl.Sub Court) Cuddalore.



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For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mrs.V.Ramya Rao
for R2 to R8
R1-Died
R9 -set *ex-parte* before the Tribunal

J U D G M E N T

Challenging the award dated 31.07.2017 made in M.C.O.P.No.153 of 2010 on the file of the Motor Accident Claims Tribunal (Prl.Sub Court) Cuddalore, the Insurance Company has preferred this appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The facts in a nutshell are as follows :

On 26.3.2009 at about 2.30 p.m., when the claimant was proceeding in his TVS 50 Moped on the extreme left side opposite to Ambedhkar Statue, Panruti, a lorry bearing Registration No.TN-49-S-5596, belonging to the first respondent and insured with the second respondent, came from South to North direction on Panruti to Chennai road without



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blowing horn, driven by its driver in a rash and negligent manner, hit against the claimant's vehicle. Due to the said impact, the claimant sustained grievous injuries all over the body. Hence, the injured/claimant filed a claim petition claiming a sum Rs.5,00,000/- as compensation. During the pendency of the claim petition, the injured/claimant died on 11.04.2014 and his legal heirs viz., wife, sons, daughters and mother are brought on record as claimants 2 to 10 in the claim petition. Pending claim petition, the mother of the injured/claimant also died.

4. The first respondent, who was the owner of the lorry bearing Registration No.TN-49-S-5596, remained *ex-parte* before the Tribunal.

5. The said claim petition was resisted by the second respondent/Insurance Company by filing a counter statement denying the manner of the accident as projected by the first claimant (deceased) in the claim petition. They also denied the avocation and income of the first claimant (deceased) mentioned in the claim petition. It is the specific defence of the Insurance Company that the first claimant died after five



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years from the date of accident and there is no nexus between the injuries sustained by him in the accident and his death. Hence, the other claimants are entitled to only the medical expenses incurred by the first claimant (deceased). Thus, they sought for dismissal of the claim petition.

6. In order to prove the claim on the side of the claimants, the second claimant, who is the wife of the first claimant (deceased), examined herself as P.W.1 and 6 documents were marked as Exs.P1 to P6. On the side of the Insurance Company, one of the officers of the Insurance Company was examined as R.W.1, and 2 documents were marked as Ex.R1 and Ex.R2.

7. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident was the result of rash and negligent driving of the driver of the lorry bearing Registration No.TN-49-S-5596 and passed an award for a sum of Rs.2,13,000/-. The break-up details of the amounts awarded by the Tribunal under various heads are as follows :



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<i>S.No.</i>	<i>Heads under which the amount is awarded by the Tribunal</i>	<i>Amount in Rs.</i>
1.	Pain and Suffering	40,000
2.	Loss of amenities	35,000
3.	Loss of income for a period of one year	72,000
4.	Attendant Charges	30,000
5.	Transportation	20,000
6.	Extra nourishment	15,000
7.	Damages to clothes	1,000
	Total	2,13,000

8. Challenging the quantum awarded and the liability fixed by the Tribunal, the Insurance Company has filed the present appeal.

9. The learned counsel for the appellant/Insurance Company submitted that the accident had occurred only due to the rash and negligent driving of the first claimant (deceased) and there is no contributory negligence on the part of the driver of the lorry bearing Registration No.TN-49-S-5596. Though the First Information Report (F.I.R) was registered against the driver of the lorry and the same was closed as "mistake of fact", the Tribunal failed to consider the same and fixed the entire liability on the driver of the lorry and directed the Insurance Company to pay



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compensation. He further submitted that, after five years from the date of accident, the first claimant died and there is no connection between the injuries sustained by him in the accident and his death. The Tribunal though rightly held that the first claimant died not due to accidental injuries, but ought to have dismissed the claim petition but the Tribunal awarded the compensation. There is no documentary evidence to prove that, after the accident, the first claimant's earning capacity has affected and there is also no evidence to prove his employment and income, but the Tribunal erroneously fixed notional income at Rs.6,000/- and awarded a sum of Rs.72,000/- [6,000 x 12] as annual loss of income for a period of one year. Further, the amounts awarded by the Tribunal under the other heads, are also on the higher side. Hence, the impugned award passed by the Tribunal, does not reflect "just, fair and reasonable" compensation, which warrants interference by this Court.

10. The learned counsel for the respondents 2 to 8/claimants submitted that, at the time of accident, the first claimant (deceased) was 50 years and was earning a sum of Rs.9,000/- per month and he was the only



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bread-winner of his family. Due to the accidental injuries, he died on 11.04.2014 and his legal heirs were impleaded in the claim petition. She further submitted that, even the Investigation officer closed the case as "mistake of fact" and the facts remained that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. Therefore, the owner and insurer of the lorry are liable to pay compensation. Further, at the time of accident, the Insurance Policy was in force and there is no violation of policy conditions, the appellant/Insurance Company is liable to indemnify the owner of the lorry.

11. Heard the learned counsel for the appellant and the learned counsel for the respondents 2 to 8.

12. The accident is admitted. The offending vehicle involved in the accident is also admitted. The offending vehicle was insured with the appellant/Insurance Company is also not in dispute. Now, the only question



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that arises for consideration is as to whether the Tribunal has rightly fixed the liability or not.

13. On a perusal of the records, it is seen that the case was registered against the driver of the lorry and subsequently, the same was closed as "mistake of fact", however, it is not stated that there was no negligence on the part of the driver of the lorry. On the side of the claimants, since the first claimant died, his wife examined herself as P.W.1 and she has categorically stated that, on the date of accident, the first claimant, who is aged about 50 years, drove the motor-cycle with due care and caution, however, the driver of the lorry drove the vehicle in a rash and negligent manner, hit against the first claimant's motor-cycle and that the accident had occurred. However, no contra evidence was let in by the appellant/Insurance Company to prove that the accident had occurred only due to the rash and negligent driving of the first claimant and even they did not choose to examine the driver of the lorry. Therefore, in the absence of any contra evidence, the Tribunal has fixed the liability on the driver of the lorry.



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14. This Court, being the first appellate Court, and the final Court of fact finding, and considering the entire materials available on record independently, finds that the accident had occurred only due to rash and negligent driving of the driver of the lorry. Therefore, the owner and the insurer of the lorry are liable to pay compensation.

15. With regard to the quantum of compensation, pending proceedings, the first claimant died and absolutely, there are no materials to prove that the first claimant died due to the accidental injuries and hence, the Tribunal considered the claim petition as injured case. Though the legal heirs of the first claimant were impleaded as claimants, they have stated that the first claimant (deceased) was earning a sum of Rs.9,000/- per month and due to accidental injuries, he could not go for work, but absolutely, no documentary evidence was produced before the Tribunal to substantiate the same. In the absence of any documentary evidence, the Tribunal has fixed the notional income of the deceased at Rs.6,000/- per month and awarded compensation of Rs.72,000/- under the head "Loss of



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income" for one year. This Court re-appreciated the entire materials and finds that the monthly income of Rs.6,000/- fixed by the Tribunal cannot be said to be exorbitant and also finds that due to the injuries sustained by the first claimant (deceased), he could not go for work at least for six months. Hence, 12 months taken for Loss of income by the Tribunal is set aside, and instead of, six months is fixed for computing loss of income of the first claimant. Thus, by taking Rs.6,000/- as monthly income, loss of income is awarded at Rs.36,000/- [6,000 x 6].

16. Further, the Tribunal awarded a sum of Rs.35,000/- under the head "Loss of Amenities" and also a sum of Rs.30,000/- under the head "Attendant Charges". However, there are no materials to show that, after the accident, the first claimant (deceased) was unable to carry out his day-to-day affairs and without the help of the attenders, he had taken treatment. Therefore, the amounts awarded under the head Loss of Amenities and Attendant Charges are set aside.

17. Similarly, sum of Rs.20,000/- awarded by the Tribunal



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under the head "Transportation" appears to be on the higher side and hence, the same is hereby reduced to Rs.10,000/-.

18. The amounts awarded by the Tribunal under all the other heads are 'just and fair' and hence, the same are confirmed.

19. The total compensation is re-determined as follows:

<i>S. No.</i>	<i>Heads under which amounts are awarded</i>	<i>Amounts awarded by the Tribunal (in Rs.)</i>	<i>Amounts awarded by this Court (in Rs.)</i>
1.	Pain and Suffering	40,000	40,000
2.	Loss of amenities	35,000	-
3.	Loss of income for one year	72,000	36,000 (loss of income for six months)
4.	Attendant Charges	30,000	-
5.	Transportation	20,000	10,000
6.	Extra nourishment	15,000	15,000
7.	Damages to clothes	1,000	1,000
	Total	2,13,000	1,02,000

20. The total compensation of **Rs.2,13,000/-** awarded by the Tribunal is hereby reduced to **Rs.1,02,000/-** [Rupees one lakh and two



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thousand only] which shall carry interest at 7.5% from the date of claim petition till the date of payment. The appellant/ Insurance Company and the ninth respondent herein/owner of the lorry are directed to jointly and severally deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw their respective shares as apportioned by the Tribunal.

21. With the above direction, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.07.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accident Claims Tribunal
Principal Sub Court,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.

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