



C.M.A.No.4348 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4348 of 2019
and C.M.P.No.24793 of 2019

Reliance General Ins. Co. Ltd.,
2nd Floor, Sri Abirami Towers,
No.43B, Cowley Brown Road,
R.S.Puram,
Coimbatore – 641 002.

... Appellant

Versus

1.Umavathy
2.Mimor J.Solomon Monish
3.Minor J.Vijayabharathi
4.E.Lourdhumary
5.M.Eruthayasamy
6.S.Karthick
7.S.Saravana kumar

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act against the judgment and decree dated 22.01.2018 made in MACT O.P.No.492 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District Court, II Additional District Judge, Erode.



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For Appellant : Mrs.C.Bhuvanasundari
For Respondents
For R1 to R5 : Mr.R.Nalliyappan
For R6 & R7 : Notice dispensed with

J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by the Motor Accident Claims Tribunal, II Additional District Court, II Additional District Judge, Erode, in MACT O.P.No.492 of 2016 dated 22.01.2018.

2. The Insurance Company is the appellant herein, preferred the above appeal challenging the award of the Motor Accident Claims Tribunal, II Additional District Court, II Additional District Judge, Erode, in MACT O.P.No.492 of 2016 on the ground of negligence and quantum.



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3. It is the case of the claim petitioners that on 01.02.2016 at about 09.30 p.m., Joseph (since deceased) was travelling as pillion rider in a motorcycle bearing Regn.No.TN-37-CM-5590, which was driven by one Harish, on Thondamuthur to Polluvampatti Road, from west to east direction. While the deceased was proceeding so, near Thenral Nagar, the 1st respondent was driven the motorcycle bearing Regn.No.TN-37-CB-3379, proceeding in same direction was going ahead to the deceased motorcycle, in a rash and negligent manner, hit abruptly against the deceased motorcycle. Hence, the accident occurred, due to which, both of them fell down and sustained grievous injuries. Particularly, the deceased Joseph sustained head injury and died on the way to hospital. Hence, the claim petition.

4. Before the Tribunal, on behalf of the claim petitioners, P.W.1 to P.W.7 were examined and Ex.P1 to Ex.P28 were marked and on the side of the Respondents no one was examined and no document was marked.

5. On appreciation of materials before it, the Tribunal awarded



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compensation as follows:

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(a) Loss of income	:	Rs. 15,75,000/-
(b) Loss of love and affection	:	Rs. 2,50,000/-
(c) Loss of consortium	:	Rs. 40,000/-
(d) Funeral expenses	:	Rs. 15,000/-
(e) Loss of estate	:	Rs. 15,000/-

Rs. 18,95,000/-

The said sum was directed to be paid by the 3rd respondent / appellant herein on behalf of the respondents 6 and 7 herein, along with interest at 7.5% per annum from the date of petition till the date of realization. Aggrieved against the same, the appellant / Insurance Company has come out with the present appeal.

6. Learned counsel for the appellant / Insurance Company submitted that the award passed by the Tribunal is totally unjustified and not in consonance with the facts and circumstances of the case and evidence placed on record. The Tribunal erred in holding that the negligence of the driver of motorcycle bearing Regn.No.TN-37-CB-3379 had resulted in the alleged road traffic accident without consideration the manner of occurrence and the



evidence placed on record. The Tribunal failed to take into consideration and answer the question raised in their counter by the appellant that at the time of accident, the rider of both motorcycles did not possess valid driving license since the same are not marked as documents, a policy violation. The Tribunal though has acknowledged that it was a head on collision failed to consider contributory negligence on the part of the rider of the motorcycle bearing TN-37-CM-5590 for not taking any action to avoid the accident. The Tribunal has acknowledged that the petitioners did not submit documentary proof regarding income of the deceased (a painter) and hence, took notional income at Rs.10,000/- per month. But, the same Tribunal in M.C.O.P.No.221 of 2016 adopted Rs.6,500/- per month as notional income for the rider of the motorcycle (also a painter) bearing Regn.No.TN-37-CM-5590 on which, the deceased was riding pillion at the time of accident.

7. He further submitted that the Tribunal has cited *National Insurance Co., Vs. Pranay Sethi* case but digressed from it by awarding Rs.2,50,000/- towards loss of love and affection, the same is not considered a conventional / traditional head, thereby defeating the concept of just



compensation. The Tribunal erred in proceeding to determine the rate of interest at 7.5% per annum which runs contrary to Section 149(1) of M.V Act r/w. Section 34 of CPC. The Tribunal has failed to restrict the applicability of interest to the actual financial loss suffered by the respondents / petitioners from date of filing the petition to its satisfaction, and not on other heads like loss of consortium, etc., that are non pecuniary, qualitative and discretionary in nature. As a result, interest works out to a substantial additional income which is a windfall, ballooning the total compensation payable and liability to pay Advocate's fee at Rs.25,950/- is erroneous, illegal and the same is impermissible in the eye of law. Hence, the compensation awarded by the Tribunal may be set aside.

8. The learned counsel for the respondents 1 to 5 submitted that the compensation awarded by the Tribunal is just and reasonable and the liability fixed on the 3rd respondent / appellant herein on behalf of the respondents 6 and 7 are also just and proper and hence, it does not requires any interference of this Court. Hence, the appeal may be dismissed.

9. Heard the learned counsel for the petitioner, the learned counsel for the respondents 1 to 5 and perused the materials available on record.



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10. After going through the oral and documentary evidence, the Tribunal fixed the income of the deceased at Rs.12,500/- per month and awarded Rs.15,75,000/- ($\text{Rs.12,500/-} \times 12 = \text{Rs.1,50,000/-}$ deduction $\frac{1}{4} = \text{Rs.1,12,500/-} \times 14 = \text{Rs.15,75,000/-}$) towards loss of income of the deceased, which appears to be just and proper and hence, the same is hereby confirmed. The Tribunal awarded Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, which appears to be just and proper and the same are hereby confirmed. The Tribunal awarded Rs.2,50,000 towards loss of love and affection, which appears to be higher side. As per the *Pranay Sethi's* case, this Court is inclined to reduce the amount from Rs.2,50,000/- to Rs.1,60,000/- ($40,000 \times 4$).

11. In the light of the said discussions, the modified award is as follows:

<i>Sl.Nos.</i>	<i>Heads</i>	<i>Compensation</i>
1.	Loss of income	Rs.15,75,000/-
2.	Love and affection	Rs.1,60,000/- ($40,000 \times 4$)



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<i>Sl.Nos.</i>	<i>Heads</i>	<i>Compensation</i>
3.	Loss of consortium	Rs.40,000/-
4.	Loss of estate	Rs.15,000/-
5.	Funeral expenses	Rs.15,000/-
Total		Rs.18,05,000/-

Accordingly, the compensation awarded by the Tribunal is modified from Rs.18,95,000/- to Rs.18,05,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit of compensation.

12. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, modifying the compensation from Rs.18,95,000/- to Rs.18,05,000/-, with 7.5% interest per annum to the extent indicated above. No Costs.

(ii) the appellant/Insurance Company is directed to deposit the modified award amount, with interest and costs before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, claimants are entitled to get the modified award amount as per the apportionment made by the Tribunal. The



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claim Petitioner is permitted to withdraw the modified award amount with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) the claim Petitioner is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee. Connected miscellaneous petition is closed.

15.06.2023

Index:yes/no
Internet:yes/no
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To

The II Additional District Judge,
Motor Accident Claims Tribunal,
Erode.

A.A.NAKKIRAN.J.,

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