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C.M.A(MD)No.626 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2022

Pronounced on : 24.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.626 of 2012

The Royal Sundaram Alliance Insurance Co.Ltd.,
represented by its General Manager
Subramaniam Building,
II Floor No.1, Club House Road,
Anna Salai,
Chennai – 600 002.

... Appellant / second respondent

Vs.

1.Jones Sugumaran

2.Ammani Prema

... Respondents 1 and 2 / claimants

3.Ernest Deva Kadatcham Stanley

4.Morin Jones

... Respondents 3 and 4/ respondents 1 and 3

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, District Judge, Kanyakumari at Nagercoil in M.C.O.P.No.253 of 2005, dated 31.10.2011.

For Appellant : Mr.S.Srinivasa Raghavan

For R1, R2 & R4 : Mr.M.P.Senthil



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3. Brief substance of the counter filed by the first respondent is as follows:

The first respondent was not responsible for the accident. The age, qualification of the deceased and the manner of accident has to be proved. Applying sudden brake in the signal area caused the accident. The first respondent also sustained heavy injury all over the body. The respondent was acquitted in the criminal case and he is not liable to pay compensation.

4. Brief substance of the counter filed by the second respondent is as follows:

The age and qualification of the deceased and the manner of accident has to be proved. The accident happened due to the negligence of the 4th respondent. When the deceased and the 4th respondent travelled in TN-74-H-2470, the first respondent travelled in TN-74-H-9497, Tempo was proceeding in front of both the two wheeler and both the first and fourth respondents applied brakes due to the signal. Both the motor cycles came side by side and rammed into the Tempo from the back side. Since the 4th respondent was wearing a helmet, he escaped with small injuries. The



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deceased was thrown away and he sustained severe injuries. Both the motor cycles were damaged. All the persons colluded together and they fraudulently filed a case against the rider of the vehicle bearing Registration No.TN-74-H-9497. The petition is not maintainable for non joinder of necessary parties.

5.Brief substance of the counter filed by the 4th respondent is as follows:

The 4th respondent is an unnecessary party to the case. The 4th respondent drove the vehicle in a slow and cautious manner. It was the first respondent, who was the owner cum rider of the two wheeler bearing Registration No.TN-74-H-9497 came from the back side of the two wheeler driven by the 4th respondent and hit from the back side and caused the accident. The Police registered a case against the first respondent and the charge sheet was laid against him. This respondent is not responsible for the accident and he is not liable to pay compensation.

6.Brief substance of the counter filed by the 5th respondent is as follows:

The 5th respondent is only a formal party. Neither the insured motor



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bike nor its driver was at fault. The petitioners have to prove the age, qualification and income of the deceased. The deceased was a student. The First Information Report, Charge Sheet, M.V.Report, Rough Sketch, Observation Mahazer would prove that the first respondent was responsible for the accident. Hence, the 5th respondent is not liable to pay compensation to the petitioners. The amount claimed as compensation, is excessive. The petitioners have not produced the policy number and driving license of the 4th respondent.

7.Two witnesses (2) were examined and seven (7) documents were marked on the side of the petitioners. Three witness (3) were examined and six (6) documents were marked on the side of the respondents. The Tribunal has awarded Rs.6,85,000/- as compensation, to be paid by the first and second respondents.

8.Against the order, the appellant has preferred this appeal on the following grounds:

The trial Court is wrong in fixing the monthly income as Rs.10,000/-. The deceased was only a student, he was not an earning member of the family



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and the Tribunal awarded notional income as Rs.3,000/- per month. The respondents were not dependants of the deceased.

9.The liability was not questioned in the appeal. PW2 was examined as an eye witness. A copy of the First Information Report was marked as Ex.P1 and the copy of the Observation Mahazar was marked as Ex.P2 and the copy of the Rough Sketch was marked as Ex.P3 and the copy of the M.V.Report of the vehicle marked as Ex.P5 and Ex.R2 and the copy of the Judgment in C.C.No.25 of 2002 of Judicial Magistrate No.III, Nagercoil was marked as Ex.R6. Ex.R1 is a private Investigation Report. RW2 and RW3 were not eye witnesses. RW3 has admitted that he had conducted the investigation, after the expiry of two months from the date of accident. On the basis of the evidence of eye witness - PW1 and on the basis of Ex.P1, P3, P5 and Ex.R2, the Tribunal fixed the responsibility on the first respondent, which is reasonable. There is no dispute regarding the Insurance Policy, so the Tribunal fixed the liability on the second respondent. Hence, it is decided that the appellant and the third respondent herein are liable to pay compensation.



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10. On the side of the appellant, it is stated that the accident has happened in the year 2004 and the Tribunal has fixed the monthly income as Rs.10,000/-. The deceased was only a student and hence the income fixed by the Tribunal is excessive. It is seen that at the time of accident, the deceased was studying second year B.E., Course. Considering the date of accident and considering the educational qualification, the income of the deceased is fixed as Rs.6,000/-.

11. The deceased was a bachelor and after deducting 50% towards his own expenses, he might have contributed Rs.3,000/- for his family members. The Tribunal has adopted multiplier '11' on the basis of the age of the father and mother of the deceased, which is not correct. As per the dictum of the Hon'ble Supreme Court, the age of the deceased, has to be taken into consideration in fixing the multiplier. For the age of the deceased, multiplier '18' is applicable. After applying multiplier '18', the loss of income is calculated at Rs.6,48,000/- (3,000/- x 12 x 18).

12. The Tribunal has awarded Rs.1,000/- towards Transport expenses, Rs.500/- towards damage to articles, Rs.3,500/- towards funeral expenses,



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Rs.10,000/- towards shock and mental agony and Rs.10,000/- towards loss of love and affection, which are all reasonable.

Loss of Income	- Rs.6,48,000/-
Transport Expenses	- Rs. 1,000/-
Damage to Articles	- Rs. 500/-
Funeral Expenses	- Rs. 3,500/-
Shock and Mental Agony	- Rs. 10,000/-
Loss of love and Affection	- Rs. 10,000/-
Total	----- Rs.6,73,000/- -----

13.The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.6,85,000/- to Rs.6,73,000/- (Rupees Six Lakhs and Seventy Three Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant/Insurance company, is directed to deposit the modified compensation amount of Rs.6,73,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.253 of 2005 on the file of the Motor Accident Claims Tribunal, District Judge, Kanyakumari at Nagercoil, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the Appellant/Insurance Company, the first Respondent/1st claimant/Father is permitted to withdraw his share of Rs.2,73,000/- (Rupees Two Lakhs and Seventy Three Thousand only) with proportionate interest and cost, the second Respondent/2nd claimant/Mother is permitted to withdraw her share of Rs.4,00,000/- (Rupees Four Lakhs only) with proportionate interest.

24.04.2023

Index: Yes / No

Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal,
District Judge,
Kanyakumari at Nagercoil.

2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.THARANI, J.

vsd

Pre - Delivery Judgment made in
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