



C.M.A.(MD)No.63 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.02.2023

Delivered On : 23.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.63 of 2020

The Branch Manager (Branch No.1)

National Insurance Company Limited,

No.6, West Masi Street,

Madurai – 1.

... Appellant / 2nd respondent

Vs.

1.Subbulakshmi

2.Rajarathinam

3.Shankaranarayanan

4.Vigneshwaran

... Respondents 1 to 4 /Petitioners

5.K.Ravi

... 5th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.C.O.P.No. 25 of 2016, dated 03.01.2019, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sivakasi.

For Appellant

: Mr. J.S.Murali

For Respondents

: Mrs.S.Mahalakshmi for R1 to R4

: R5 – Exparte



C.M.A.(MD)No.63 of 2020

JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.25 of 2016, dated 03.01.2019, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sivakasi. The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.25 of 2016, is as follows:-

On 10.10.2015, at about 01.45 pm, when the deceased - Subramanian was riding a two wheeler bearing Registration No.TN-67-E-6966 along the Virudhunagar - Sattur road, keeping the left side of the road, a Maruthi van bearing Registration No.TN-59-J-1524 came in a rash and negligent manner from behind the deceased, dashed against the two wheeler. The deceased was taken to Government Hospital, Virudhunagar, then, he was taken to Madurai Rajaji Hospital and he died on his way to the Hospital. The deceased was working as an Engineer in Virudhunagar Municipality and he was earning Rs.50,000/- per month. The petitioners are his dependants and they claim a sum of Rs.40,00,000/- as compensation.



C.M.A.(MD)No.63 of 2020

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3. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.25 of 2016, is as follows:

The deceased was not having driving licence. The two wheeler was not insured. A petition cannot be filed both under Section 163-A and under Section 166 of Motor Vehicles Act. 163-A of M.V. Act is applicable only for a person having a salary below Rs.3,600/- per month. The income of the deceased is stated as Rs.47,561/- and hence, the petition under Section 163A is not maintainable. Omni Van was driven by its driver in a slow and cautious manner. It was the deceased, who rode the two wheeler in a rash and negligent manner. On seeing the vehicle, the driver applied sudden brake, even then, the Van hit the two wheeler. The accident did not happen due to the rash and negligent driving of the car driver. The claim is excessive.

4. 2 witnesses were examined and 24 documents were marked, on the side of the claimants. 1 witness was examined and 2 documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.37,62,286/- as compensation to be paid by the respondents.



C.M.A.(MD)No.63 of 2020

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5. Against the order, the second respondent / appellant has filed this appeal on the following grounds:-

The date of birth of the deceased as per the Aadhaar card is 10.07.1958. The age of the deceased was more than 57 years, he was nearing his retirement and hence, split multiplier should be adopted. The Tribunal is wrong in adopting multiplier '8', instead of adopting multiplier of 1 + 7. The Tribunal ought to have awarded Rs.70,000/ under the conventional heads and the award is excessive.

6. P.W.2 was examined as an eye witness, he has deposed that the accident has happened due to the rash and negligent driving of the car driver. Copy of the F.I.R was marked as Ex.P1. Copy of the Charge sheet was marked as Ex.P2. Copies of the M.V.I. Reports were marked as Ex.P3. Copy of the Rough Sketch was marked as Ex.P5 and Ex.R1.

7. It is seen that the car hit against the two wheeler from behind. Hence, it is decided that the car driver is responsible for the accident. The car was insured with the appellant. Hence, it is decided that the appellant is liable to pay compensation on behalf of the owner of the vehicle.



C.M.A.(MD)No.63 of 2020

8. On the side of the appellant, it is stated that the age of the deceased at the time of accident was more than 57 years and the age of superannuation is 58 years. Only for 1 year, the deceased might have received the salary. After the date of superannuation, the deceased might be getting only $\frac{1}{2}$ of the salary as pension. Hence, split multiplier method ought to have been adopted and the award is to be suitably reduced.

9. On the side of the respondent, it is stated that the law is now well settled and that there is no necessity to apply the split multiplier method.

10. On the side of the respondent, a judgment of the Hon'ble Supreme Court reported in **2022-1TNMAC-289 (SC)** in a case of **(R.Valli V. Tamil Nadu State Transport Corporation Ltd.)**, wherein, it is stated as follows:-

“11. Thus, we find that the method of determination of compensation applying two multipliers is clearly erroneous and run counter to the judgment of this Court in Pranay Sethi, affirming the judgment in Sarla Verma. Since the deceased was 54 years of age on the date of incident, therefore, the suitable multiplier would be 11 as per the judgment of this Court in Sarla Verma approved by this Court in Pranay Sethi.”



C.M.A.(MD)No.63 of 2020

WEB COPY

11. As per the dictum of the Hon'ble Supreme Court narrated above, it is decided that there is no need to apply split multiplier method. The contention of the appellant is not sustainable.

12. The Tribunal has awarded Rs.70,000/- in total towards conventional charges under various heads, which is reasonable.

13. For the above said reasons, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Appeal is dismissed. The compensation awarded by the Tribunal is hereby confirmed.

(i) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.37,62,286/- (if not 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 with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the Insurance Company, the respondents 1 to 4 / claimants are permitted to withdraw the award amount as



C.M.A.(MD)No.63 of 2020

apportioned by the Tribunal, on filing of proper petition before the Tribunal,
less any amount, if already withdrawn by them. The Claimants are not
entitled for interest for the default period, if there is any default. No costs.

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NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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C.M.A.(MD)No.63 of 2020

R. THARANI, J.

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To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sivakasi.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.63 of 2020

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