



C.M.A.(MD).No.175 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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- 1.Muthu Malar
- 2.Minor R.Keerthiga Devi
- 3.Minor Prithiga Devi
- 4.Karuppayi
- 5.Pavadiyan

... Appellants

Vs.

- 1.S.Arivalagan
- 2.The Branch Manager,
Cholamandalam MS General Insurance
Company Limited,
3rd and 4th Floor,
Dindigul Main Road,
Kalavasal,
Madurai 625 016.

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2021 passed in M.C.O.P.No.82 of 2017 on the file of the Motor Accident Claims Tribunal (1st Additional District Judge), Theni at Periyakulam.

For Appellants	: Mr.I.Robert Chandrakumar
For R1	: No appearance
For R2	: Mr.K.R.Shivashankari



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J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal, 1st Additional District Judge, Theni at Periyakulam in M.C.O.P.No.82 of 2017, dated 30.04.2021, the present appeal has been filed by the claimants.

2.The brief facts leading to the filing of this appeal are as follows:

On 14.01.2017, at about 2.00 a.m., the deceased and his father were travelling in a TAA ACE vehicle bearing Registration No.TN 58 AL 4439 along with the load of sugarcane. It is the case of the claimants that the deceased and his father were carrying the sugarcane in the TAA ACE vehicle bearing Registration No.TN 58 AL 4439 and the father was seated in front, however, the deceased travelled along with the goods. The driver of the TAA ACE vehicle drove the vehicle in a rash and negligent manner and lost the control. As a result, the vehicle capsized and the deceased succumbed to injuries. The claimants being the wife, two minor children and the parents claimed the compensation before the Tribunal.

3. The Tribunal holding that since the deceased was travelled in the goods vehicle, he should be treated as a gratuitous passenger, besides holding



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that the driver of the offending vehicle did not possess valid driving licence and directed the owner of the vehicle to pay the compensation. Challenging the same, the present appeal came to be filed.

4. The contention of the learned counsel appearing for the appellants is that the Tribunal has directed the owner of the vehicle to pay the compensation, which is not correct. That apart, the Tribunal has also fixed the notional income of the deceased at the rate of Rs.10,000/- only. Admittedly, the deceased was aged about 30 years at the time of death.

5. The learned counsel appearing for the second respondent/Insurance Company would submit that the F.I.R itself indicate that four people were travelling in the goods vehicle and two of them were seated in the cabin and the deceased and one more seated on the goods viz., the sugarcane load and her contention is that there is no evidence to show that the deceased was the owner of the goods. Therefore, the Tribunal has rightly held that he is only a gratuitous passenger.

6. In the light of the above submissions, now the points for consideration in this appeal are,



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(i) whether the Tribunal is right in holding that the deceased is only the gratuitous passenger?

(ii) whether the compensation arrived by the Tribunal is just and reasonable?

7. It is not disputed that though four people travelled in the goods vehicle, two of them were seated in the cabin and the deceased and another was seated along with the goods. In fact, the deceased travelled along with the goods. The evidence of P.Ws.1 and 2 makes it very clear that they were carrying the sugarcane load in the vehicle. Therefore, as the deceased was travelled along with the load of sugarcane, he cannot be construed as a gratuitous passenger. Therefore, this Court is of the view that merely because somebody also travelled in the cabin, the same will not take away the rights of the legal heirs of the deceased. In fact, he has travelled along with the goods.

8. In such a view of the matter, the Tribunal finding that he was a gratuitous passenger, the claimants are not entitled to compensation from the Insurance Company is not correct. Admittedly, the policy is not in dispute. Such being the position, the Insurance Company cannot contend that they are not liable to pay the compensation. The other contention is that the driver of the



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vehicle did not possess valid driving licence. Though it is established on record that the driver of the vehicle did not have a valid driving licence, at the most the Insurance Company can pay the award amount and recover the same from the owner of the vehicle.

9. In such a view of the matter, this Court is of the view that the direction to pay the owner first is not correct. As far as the compensation is concerned, at the time of accident, the deceased was aged about 30 years and the accident took place on 13.01.2017 and he would have earned more than Rs.12,000/-. Hence, this Court is inclined to fix the notional income of the deceased at the rate of Rs.12,000/- per month and added 40% towards future prospects Rs. 12,000/- + Rs.4,800=Rs.16,800/- and after deducting 1/4th share towards personal expenses, the totally monthly income comes to Rs.12,600/- (Rs. 16,800/- - Rs.4,200/- = Rs.12,600/-). Thus, the total loss of dependency comes to Rs.25,70,400/- (Rs.12,600/- x 12 x 17 = Rs.25,70,400/-). Further, this Court awarded a sum of Rs.1,60,000/- towards loss of love and affection. In respect of the other aspects, the amount awarded by the Tribunal is confirmed.

10. The modified award amount is as follows:



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Description	Amount
Loss of dependency	Rs.25,70,400/-
Loss of love and affection	Rs.1,60,000/-
Loss of consortium	Rs.40,000/-
For Transportation	Rs.15,000/-
For funeral expenses	Rs.15,000/-
Total	Rs.28,00,400/-

9. In the result, the Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the entire award amount within a period of six weeks from the date of receipt of a copy of this judgment with interest at the rate of 7.5% per annum. On such deposit, the first appellant is entitled to a sum of Rs.10,00,000/-, the second and third appellants are entitled to a sum of Rs.6,50,000/- each and the appellants 4 and 5 are entitled to a sum of Rs.2,50,200/- each. In respect of the minors/appellants 2 and 3, the Insurance Company is directed to deposit the award amount in anyone of the Nationalised Bank till they attain majority and the first appellant is permitted to withdraw the interest once in three months. The Insurance Company is directed to deposit the award amount and recover the same from the owner of the vehicle. No costs. The Registry is directed to draft the decree, only after payment of excess Court fee if any towards the enhanced award amount.



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To

- 1.The Motor Accident Claims Tribunal
(1st Additional District Judge),
Theni at Periyakulam.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR,J.

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