



C.M.A.(MD).No.54 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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1.Senthil

2.Esakkiammal

... Appellants

Vs.

1.Subramanian

2.The New India Assurance Company Limited
through its Divisional Manager,
Office at 84-A, Trivandrum Road,
Palayamkottai.

3.Govindasamy

4.United India Insurance Company Limited
through its Branch Manager,
No.4A, Big Bazaar Street,
Dharapuram.

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.1564 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Tirunelveli, dated 23.12.2020.

For Appellants : Mr.T.Selvakumaran

For R1 and R3 : No appearance

For R2 : Mr.B.Vijaya Karthikeyan

For R4 : Mr.R.Srinivasan



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J U D G M E N T

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Not satisfied with the quantum of compensation awarded by the Tribunal, the appeal has been filed by the claimants.

2. On 09.12.2009, at about 5.00 a.m., while the deceased, aged about 49 years was travelling in a Mini Lorry bearing Registration No.TN 72 X 8105, belonging to the first respondent, insured with the second respondent, near Kurthiraisankalam, the driver of the Mini Lorry bearing Registration No.TN 33 AZ 8389 belonging to the third respondent, insured with the fourth respondent, which was parked on the middle of the road, without any park lamp in a rash and negligent manner hit from the behind. As a result, the deceased trapped inside the Mini Lorry and sustained serious injuries and died on the spot itself. Thereafter, a case in Crime No.766 of 2009 has been registered by the Thirumangalam Police Station against the first respondent's driver and the third respondent's driver. The deceased was lorry driver by profession and thereby earning a sum of Rs.15,000/- per month. Hence, the petitioners have filed the claim petition seeking a sum of Rs.25,00,000/-.

3. The second respondent/Insurance Company has filed a counter stating that the driver of the first respondent's Mini Lorry bearing Registration No.TN



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72 X 8105 was not the cause for the accident and the said Mini Lorry was not insured with the second respondent and the driver has no driving licence at the time of accident. Further, it is the contention that since the third respondent's lorry was parked across the road without glowing any parking lamp, the accident had happened. The fourth respondent/Insurance Company has filed a counter stating that the lorry bearing Registration No.TN 33 AZ 8389 was parked on the eastern left side of the road, due to tyre burst and necessary signals were put on the back side of the lorry. At that time, the offending vehicle belongs to the first respondent came in a rash and negligent manner, without observing the traffic rules and dashed at the back side of the third respondent's lorry. Hence, the first respondent's mini lorry driver was negligent and solely responsible for the said accident.

4. Before the Tribunal, on the side of the petitioners, P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Exs.R1 was marked and Exs.X1 and X2 were also marked.

5. The Tribunal, after considering the entire evidence, held that the accident was occurred due to the rash and negligent driving of both the vehicles



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and finally awarded a sum of Rs.12,70,000/- as compensation in the following manner:

S. No	Description	Amount awarded by the Tribunal
1.	Loss of income	Rs.11,70,000/-
2.	Loss of Consortium	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Transport expenses	Rs.5,000/-
	Total	Rs.12,70,000/-

and directed the respondents 2 and 4 to deposit 50% of the compensation each.

6. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal. The Insurance Company of both the vehicles have not challenged the award and the contributory negligence fixed on both sides also not disputed by way of appeal. The main contention of the learned counsel for the appellants is that the deceased was driver by profession and to prove the same, Ex.P4 / driving licence was filed before the Tribunal. However, the Tribunal has fixed only a sum of Rs.9,000/- as notional income. Therefore, the notional income ought to have been increased.



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7. Now, the point arise for consideration in this appeal is whether the Tribunal is right in fixing the notional income at the rate of Rs.9,000/-. As rightly pointed out by the learned counsel for the appellants that the deceased was holding a driving licence and Ex.P4 / driving licence has been filed before the Tribunal and the same clearly indicate that the deceased was authorised to drive the transport vehicle vide Badge No.16868 dated 06.03.1988. Therefore, this Court is of the view that the deceased is a professional driver and having a valid driving licence to drive the transport vehicle and he could have at least earned minimum Rs.12,000/- per month.

8. In such a view of the matter, Rs.9,000/- fixed by the Tribunal is very low and hence, this Court fixed the notional income at Rs.12,000/- per month and 25% is added towards future prospects and $\frac{1}{3}^{\text{rd}}$ is deducted towards personal expenses. Hence, the total income would be around Rs.10,000/-. Thus, the total loss of income comes to Rs.15,60,000/- (Rs.10,000/- x 12 x 13 = Rs. 15,60,000/-). The amount awarded under the heads of consortium at Rs. 80,000/-, funeral expenses at Rs.15,000/- and transport expenses at Rs.5,000/- remains unaltered and the same are confirmed. Thus, the total compensation payable to the appellants/claimants is Rs.16,60,000/-.



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9. In the result, this Civil Miscellaneous Appeal is allowed. The respondents 2 and 4 are directed to deposit 50% each within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw their share as apportioned by the Tribunal. No costs.

05.04.2023

akv

To

- 1.The Motor Accident Claims Tribunal,
I Additional District Judge,
Tirunelveli.
- 2.The New India Assurance Company Limited
through its Divisional Manager,
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N.SATHISH KUMAR,J.

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