



C.M.A(MD)No.492 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.02.2023

Pronounced on : 28.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

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1.S.P. Muthuraman

2.M.Balasubramanian

3.M.Leelakumari

(P3 declared as major and discharge from the
guardian of her father vide Court, order
dt. 20.04.2020 in CMP(MD).No.1970 of 2020)

4.R.Navamani

5.M.Ramasamy

... Appellants / Petitioners

Vs.

1.P. Visalakshi

2.The Manager,
National Insurance Company Ltd.,
63. Rasi Plaza,
West Pradhakshinam Road,
Karur.

3.The Managing Director,
North East Karnataka Road Transport Corporation (NEKRTC),
Central Office,
Sariage Sadana Gulbarga,
Karnataka State.

.. Respondents/ Respondents



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PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to modify the award passed in MCOP.No.609 of 2010 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Karur, dated 14.06.2016.

For Appellants : Mr.N. Sudhagar Nagaraj
For 2nd Respondent : Mr.K. Suresh
for Mr. V.J. Kumaravel

JUDGMENT

This appeal is filed against the judgment and decree, dated 14.06.2016 passed in M.C.O.P.No.609 of 2010 on the file of the Principal District Court, Karur. The appellants herein are the claimants and the respondents herein are the respondents in the claim petition.

2. A Brief substance of the claim petition is as follows:

On 24.11.2010, at about 7.40 pm, when the deceased- Jayamoorthy was riding a motorcycle bearing Regn.No. TN-47 H 7985 along with a pillion rider, by name Thennarasi a vehicle bearing Regn.No.



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TN.47-U-TC-102-KRR-2009 that was parked in the middle of the road without parking lights dashed against the deceased and the deceased – Jayamoorthy died on the spot and the pillion rider - Thennarasi died in the hospital. At the time of accident, the deceased – Thennarasi was aged about 40 years and she was working as a Female Assistant at Abishek Ortho Centre, Karur and was earning a sum of Rs.6,000/- per month and hence, the legal heirs of the deceased-Thennarasi claimed a sum of Rs. 10,00,000/- as compensation.

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

The accident did not take place as narrated in the petition. The deceased-Jayamoorthy who drove the two wheeler in a rash and negligent manner dashed against the Chassis Vehicle from behind and he invited the accident. The Chassis was insured with the 2nd respondent and hence, the second respondent alone is liable to pay compensation.

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



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The manner of accident as narrated in the petition is denied.

The deceased-Jayamoorthy, drove the two wheeler in a rash and negligent manner, that the pillion rider Thennarasi, was holding an umbrella covering her and the deceased-Jayamoorthy, as a result of which, the deceased-Jayamoorthy could not see the road properly and that ended in fatal accident.

5. A brief substance of the counter filed by the third respondent is as follows:

The manner of accident as alleged by the petition is denied. The Chassis was brought by the first respondent for body building based on a Trade certificate and that the vehicle was insured with the second respondent from 05.12.2009 to 04.12.2010. Insurance policy was in existence on the date of accident and the 2nd respondent alone is liable to pay compensation.

6. A brief substance of the additional counter filed by the second respondent is as follows:



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The policy was issued for taking the vehicle within the geographical limit of 80 Kilometers from the place manufacture of the Chassis. But, the vehicle has been brought to Karur from Gulbarga, Karnataka State which situated in 400 Kilometers away from Karur. The first respondent obtained Trade Certificate from the Regional Transport office, Karur, which could be usable only for one vehicle. But, the first respondent has used the said certificate for several vehicles and therefore, the policy conditions are violated and hence, the second respondent is not liable to pay compensation.

7. Three witnesses were examined and 10 documents were marked, on the side of the petitioners. Six witnesses were examined and 12 documents were marked on the side of the respondents. After considering the both sides, the Tribunal awarded a sum of Rs.7,55,000/- as compensation to be paid by the respondents.

8. Against the award, the claimants / appellants have filed this appeal on the following grounds:

9. The Tribunal failed to consider that the deceased was self-



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employed person and future prospects has to be awarded. The Tribunal awarded only a low amount towards loss of consortium and for funeral expenses. The tribunal failed to award Transport expenses and loss of estate. The Tribunal failed to consider that at the time of accident, the deceased was earning a sum of Rs.6,000/- per month, but the Tribunal had fixed the salary only as Rs.5,000/- and the same has to be enhanced. On the side of the appellants, it is stated that the Tribunal ought to have awarded Rs.6,000/-. The age of the deceased at the time of accident is 40 years.

10. On the side of the second respondent, it is stated that the Tribunal fixed the monthly salary as Rs.5,000/- which is reasonable.

11. Considering the age of the deceased and nature of work, the monthly income is fixed as Rs.6,000/- per month and considering the number of family members of the deceased $1/3^{\text{rd}}$ is to be deducted towards the own expenses of the deceased. After deducting $1/3^{\text{rd}}$ the deceased might have contributed Rs.4,000/- to her family members.

12. Considering the age of the deceased 25% is to be added



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towards future prospectus. After adding 25%, the monthly income is calculated as Rs.5,000/-. Considering the age of the deceased, multiplier '15' is applied and the claimants are entitled to Rs.9,00,000/- towards loss of income. (Rs.5,000/- x 12 x 15).

13. On the side of the appellants it is stated that the Tribunal ought to have considered that the age of the deceased was 40 years and 50% of the income is to be added towards future prospectus. It is stated that the Tribunal ought to have awarded Rs.1,00,000/- towards loss of consortium. But, the Tribunal has awarded only Rs.15,000/- which is very low and that the claimants 2 to 5 are each entitled to Rs.1,00,000/- towards loss of love and affection, but, the Tribunal has awarded Rs.50,000/- which is very low and that the Tribunal ought to have awarded Rs.25,000/- towards funeral expenses and Rs.1,00,000/- to each of the minor claimants towards loss of guidance and Rs.1,00,000/- to be awarded towards loss of estate and the interest should be awarded at the rate of Rs.9% per annum. On the side of the appellants it is stated that the claimants are entitled to Rs.1,00,000/- each towards loss of consortium and loss of love and affection and funeral expenses to be enhanced to Rs.25,000/-.



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14. Considering the dictum of the Supreme Court in Pranay Sethi Case, it is decided that the claimants are entitled to Rs.70,000/- towards conventional charges.

15. The total compensation is calculated as follows:

Loss of income	: Rs.9,00,000/-
Conventional Charges	: 70,000/-
Total compensation	Rs.9,70,000/-

18. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.7,55,000/- to Rs.9,70,000/-(Rupees Nine Lakhs and Seventy Thousand only) which shall carry an interest of 7.5% per annum.

(ii) The second respondent herein / Insurance Company is directed to deposit the compensation amount i.e., Rs.9,70,000/- (less the amount, if



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any, 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 cost to the credit of M.C.O.P.No.609 of 2010 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Karur, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the 1st appellant / claimant is at liberty to withdraw a sum of Rs.3,70,000/-; the appellants 2 and 3 are entitled to withdraw a sum of Rs.2,00,000/- each; the appellants 4 and 5 are entitled to withdraw a sum of Rs.1,00,000/- each; together with interest, after following the due process of law, less any amount already received by him.

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NCC: Yes / No
Index: Yes / No
Internet : Yes / No

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R.THARANI, J.

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To

- 1.The Motor Accident Claims Tribunal cum Chief Judicial Magistrate,
Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

Pre - Delivery Judgment made in
C.M.A(MD)No.492 of 2020

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