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C.M.A.(MD)No.613 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.07.2023

Pronounced on : 03.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.613 of 2023

and

C.M.P(MD)No.7808 of 2023

United India Insurance Company Ltd.,
its Branch Manager,
Seethalakshmi Complex,
Thirunagar,
Madurai – 625 006.

...Appellant/2nd Respondent

Vs.

1.Pandiarajan

2.Thogai Mayil

3.Pavithra

4.Priyadharshini

...1 to 4 Respondents/Claimants

5.Jayalakshmi Textiles Pvt. Ltd.,
Puliyuraan Road, Sempatti Village,
Aruppukottai Taluk,
Virudhungan District.

...5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the order passed by the Subordinate Judge/Motor Accident Claims Tribunal, Aruppukkottai in M.C.O.P.No.57 of 2015 dated 14.11.2019 and allow the appeal.



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For Appellant : Mr.N.Dilip Kumar
For R1 to R4 : Mr.S.Selva Aditya
For R5 : Given up

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Award dated 14.11.2019 passed in M.C.O.P.No.57 of 2015 by the Motor Accident Claims Tribunal/Subordinate Judge, Aruppukottai.

2. The second respondent in M.C.O.P.No.57 of 2015 is the appellant herein.

3. The respondents 1 to 4, who are dependents of the deceased Kamalprasath, filed the claim petition in M.C.O.P.No.57 of 2015.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 57 of 2015 is adopted hereunder.

5. The brief facts of the case:

The deceased Kamalprasath and one Thangapandi were riding as pillion rider in a two wheeler bearing registration No.TN-67-AC-7435 on



20.12.2012, which was ridden by its rider Sivakumar along the Aruppukottai to Sayalkudi road and while riding so at about 8.15 p.m near Pangajam Kresher, a bus bearing registration No.TN-67-D-3929, belonging to the first respondent, driven by its driver in a rash and negligent manner from opposite side and dashed against the two wheeler. Due to the impact, the pillion riders and the rider died on the spot. A case was registered in Cr.No.152 of 2012 by the M.Reddiyapatti police station. At the time of death, the deceased was earning Rs.20,000/- p.m in private concerns as carpenter. The petitioners 1 and 2 are parents and the petitioners 3 and 4 are sisters. The petitioners are depending on the income of the deceased Kamalprasath. The vehicle of the first respondent was insured with the second respondent. Hence, the petitioners 1 to 4 filed the claim petition seeking compensation of Rs.50,00,000/-.

6. The second respondent/insurance company objected the claim petition by contending that at the time of accident, two pillion riders were travelling along with rider. Both the rider and the said two pillion riders were under the influence of liquor and the accident took place due to rash and negligent rider of the two wheeler. Further, the rider and the pillion riders had not worn helmet and violated the policy



conditions and the FIR in Cr.No.152 of 2012 was closed as Referred Charge Sheet. Hence, the petitioners are not to entitled to compensation.

7. The Tribunal has tried the M.C.O.P.No.57 of 2015 along with M.C.O.P.No.34 of 2015. Both side adduced oral and documentary evidence. After hearing both and after considering the evidences, the Tribunal has passed common order and awarded a total compensation of Rs.13,24,000/- with interest in MCOP No.57 of 2015. Aggrieved by the said award, the second respondent has preferred this Civil Miscellaneous Appeal.

8.Heard both side and perusal the records in this Civil Miscellaneous Appeal.

9. The learned counsel appearing for the appellant has argued that in this accident, the rider and two pillion riders died and this accident happened due to negligence on the part of the two wheeler rider and pillion riders, who were under the influence of alcohol. There were three claim petitions in M.C.O.P.Nos.5 of 2013, 34 of 2015 and 57 of 2015 were filed by the respective dependents of the deceased. Against the award passed in M.C.O.P. No.5 of 2013, this second respondent preferred



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C.M.A.(MD)No.119 of 2017 before this Court and the Division Bench of this Court held that the deceased rider was liable for 15% contributory negligence. Following the same decision, this Court has held in C.M.A. (MD) No.354 of 2020 filed against the award passed in MCOP No.34 of 2015 that the deceased was liable for 15% contributory negligence. Adopting the same conclusion, the said 15% contributory negligence has to be applied in this award, which is passed as common order in M.C.O.P.Nos.34 of 2015 and 57 of 2015.

10. The learned counsel for the respondents 1 to 4/petitioners 1 to 4 (dependents of the deceased Kamalprasath) fairly conceded that 15% contributory negligence may be ordered in this case.

11. On hearing both and on perusal of records, it is clear that both side agreed about the notional income and future prospects and deduction of 1/4 towards own expenses of the deceased, multiplier and arrived out the other incidental benefits to the dependents of the deceased by the Tribunal. On perusal of order of the Tribunal, it is clear that the age of the deceased was fixed at 20 and in the absence of any acceptable document in respect of income, based on the laid down principle as per **Sarala Verma case**, notional income was fixed at Rs.7,500/- with 40%



future prospects at Rs.3,000/-, thereby totally at Rs.10,500/- p.m. As the deceased was bachelor, towards personal expenses 1/2 amount i.e., Rs.5,250/- was deducted from Rs.10,500/- and thereby arrived income for the dependents as Rs.5,250/- and multiplier 18 was taken. The Tribunal arrived at loss of income as Rs.5,250/- x 12 x 18 = Rs.11,34,000/-. In addition, the Tribunal has awarded Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- each to the petitioners 1 to 4 towards filial consortium and awarded total compensation as Rs.13,24,000/- as mentioned hereunder.

Sl. No.	Description	Amount awarded by the Tribunal
1.	Loss of income	Rs.11,34,000/-
2.	Towards funeral expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Filial consortium for petitioners 1 to 4 (Rs.40,000/- x 4)	Rs. 1,60,000/-
	Total	Rs.13,24,000/-

Thus, the quantum of compensation arrived at by the Tribunal, there is no dispute between both parties.

12. On hearing both, the only dispute is that since there was also negligence on the part the deceased rider and deceased pillion riders, contributory negligence has to be fixed at 15% as already held by the



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Division Bench of this Court in C.M.A(MD)No.119 of 2017 by its order dated 24.02.2021 and the same adopted by this court in C.M.A(MD)No. 354 of 2020 by its order dated 25.01.2023. The learned counsel for the respondents/petitioners 1 to 4 dependents of the deceased Kamalprasath admitted that 15% contributory negligence may be allowed.

13. Thus, considering the above facts and circumstances, this Court holds that the deceased was liable for 15% contributory negligence for the accident since the F.I.R.No.52 of 2012 was closed as Referred Charge Sheet and 15% of compensation Rs.13,24,000/- i.e., Rs.1,98,600/- (15% of Rs.13,24,000/-) has to be deducted from the compensation awarded by the Tribunal. Therefore, the petitioners 1 to 4/claimants in M.C.O.P.NO.57 of 2015 are entitled to Rs.11,25,400/-. To that extent, the compensation awarded by the Tribunal is modified and in other respects the award has to be confirmed.

14. In the result,

(I) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.13,24,000/- to Rs.11,25,400/- (Rupees Eleven Lakhs Twenty Five Thousand Four Hundred only).



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(iii)The first claimant/father of the deceased, who is the first respondent herein is entitled to receive a sum of Rs.2,25,400/-, the second claimant/mother of the deceased, who is the second respondent herein is entitled to receive a sum of Rs.3,50,000/- and the 3rd and 4th claimants/sisters of the deceased, who are 3rd and 4th respondents herein are entitled to receive a sum of Rs.2,75,000/- each with proportionate interests and costs.

(iv)The Appellant/Insurance Company is directed to deposit the entire compensation amount of Rs.11,25,400/- (Rupees Eleven Lakhs Twenty Five Thousand Four Hundred only), if already not deposited, 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 to the credit of M.C.O.P.No.57 of 2015 on the file of the Subordinate Judge/Motor Accident Claims Tribunal, Aruppukottai, within a period of six weeks from the date of receipt of a copy of this order. The excess amount, if any, already deposited by the Appellant /Insurance Company, shall be refunded to the appellant.



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(v) On such deposit being made by the Appellant/Insurance Company, the claimants/respondents 1 to 4 herein are permitted to withdraw their entire share amount as apportioned by this Court with proportionate interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. Consequently, connected miscellaneous petition is closed.

03.08.2023

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

To

- 1.The Subordinate Judge/Motor Accident Claims Tribunal,
Aruppukkottai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Judgment made in
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