



C.M.A. (MD)No.804 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.804 of 2021

and

C.M.P.(MD) No.7494 of 2021

National Insurance Co. Ltd.,
Rep. by its Branch Manager,
Mayiladuthurai Branch,
Koranad,
Mayiladuthurai Post,
Pin Code:609 001,
Tamil Nadu.

... Appellant/ 3rd Respondent

Vs.

- 1.Vetha Raj
- 2.Rosemary
- 3.Theresh Hemalatha
- 4.Jamila Prema Suja
- 5.Punitha

... Respondents 1 to 5/
Petitioners 1 to 5

- 6.John Bosco

... 6th respondent/
1st Respondent

- 7.C.Ravindran

... 7th respondent/
2nd Respondent



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PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.03.2020 made in M.C.O.P.No.34 of 2017 on the file of the Motor Accident Claims Tribunal, MACT, Sub-Ordinate Judge, Padmanabhapuram.

For Appellant : Mr.A.S.Mahalingam
For Respondents : Mrs.S.Sivasankari for R1 to R5
No Appearance for R7

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal, MACT, Sub-Ordinate Judge, Padmanabhapuram, in M.C.O.P.No.34 of 2017 dated 06.03.2020, the appellant – Insurance Company has filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-



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The petitioners 1 and 2 are the parents of the deceased and the petitioners 3 to 5 are the sisters of the deceased. The deceased viz., Edwin Micheal Raj was travelling in a Omni Bus bearing Registration No.KL-01-BB-7247 and while returning on 07.01.2016, at about 10.15 p.m., after visiting Matha Church in Vellankanni, on the same bus, the Driver of the Omni bus drew the bus in a rash and negligent manner. Due to the rash and negligent driving of the Driver of the bus, the Omni bus dashed on the wall, which situated on the middle of the road. As a result, the vehicle was capsized and the deceased succumbed to injuries. Apart from that, two women and two male children also died on the spot. The deceased was aged about 32 years at the time of accident. Hence, the claimants have filed the claim petition.

4. It is the contention of the 3rd respondent - Insurance Company before the Tribunal that the compensation claimed by the claimants are highly excessive and also took a stand that there was no rash and negligent driving on the part of the driver of the bus.

5. Before the Tribunal, on the side of the petitioners two witnesses were examined as P.W.1 and P.W.2 and thirteen documents were marked as Ex.P.1 to



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Ex.P.13. On the side of the respondents, no oral and documentary evidence was adduced.

6. The Tribunal after analyzing the entire materials and evidence has awarded a compensation of Rs.17,23,000/-. Challenging the same, the appeal has been filed.

7. The learned counsel for the 3rd respondent -Insurance Company submitted that there was a policy violation and the amount awarded by the Tribunal under the various heads are also excessive.

8. Heard both sides and perused the materials available on record.

9. On a perusal of the records, it is seen that before the Tribunal, the third respondent – Insurance Company only disputed the quantum claimed by the petitioners and the question of policy violation has been raised for the first time in the appeal. Therefore, the said contention cannot be countenanced and the same is liable to be rejected, since there was no pleadings in the counter denying the liability before the Tribunal. As far as the quantum is concerned, admittedly the



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deceased was aged about 32 years, which has been established before the Tribunal.

The Tribunal has correctly fixed the notional income of the deceased at Rs. 12,000/- per month and added 40% towards future prospects, as per the dictum laid down by the Hon'ble Apex Court in *National Insurance Company Ltd. Vs. Pranay Sethi and others* reported in **2017 16 SCC 680**. Since the deceased was a bachelor, the Tribunal has correctly deducted 50%, and correctly applied '16' multiplier. Further, the Tribunal has awarded a sum of Rs.15,000/- each towards Loss of Estate and Funeral Expenses and also awarded a sum of Rs.40,000/- each towards parental consortium to the petitioners 1 and 2, which are very reasonable.

10. In the above circumstances, this Court does not find any infirmity in the order of the Tribunal. Hence, this Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Accident Claims Tribunal, MACT, Sub-Ordinate Judge, Padmanabhapuram, in M.C.O.P.No.34 of 2017, dated 06.03.2020, is hereby confirmed.

11. The 3rd respondent – Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% p.a. from the date of filing the petition till the date of deposit and costs within a period of eight weeks from the



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date of receipt of a copy of this judgment, if not already deposited. No costs.

Consequently, connected Miscellaneous Petition is closed.

10.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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- 1.The Motor Accident Claims Tribunal, MACT,
Sub-Ordinate Judge,
Padmanabhapuram
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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