



C.M.A.(MD).No.163 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CMA(MD) No.163 of 2019 and
CMP(MD) No.2160 of 2019**

Iffco Tokio General Insurance Company
Represented through its Authorized Signatory
88 Balaji Towers, 1st Floor
Thadikompu Road, Dindigul

...appellant/
respondent No.2

Vs.

1.N.Selvaraj

2.S.Nagammal

... Respondent Nos.1&2/
petitioners

3.J.Vasanthakumar

... Respondent No.3/
respondent No.1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 10.10.2018 in MCOP No.18 of 2017 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, (FTC), Theni.



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For Appellant : Mr.V.Sakthivel

For Respondents : No appearance

J U D G M E N T

(Judgment of the Court was delivered by RMT.TEEKAA RAMAN, J.)

This Civil Miscellaneous Appeal is directed against the award and decree dated 10.10.2018 made in MCOP No.18 of 2017 by the Motor Accident Claims Tribunal, I Additional District Judge, (FTC), Theni.

2. The parents of the deceased are the claimants. They filed claim petition for the death of their unmarried son in a road accident that had occurred on 29.01.2017. It is their case that on 29.01.2017, at about 19.20 hrs., when the deceased Lakshmanan was riding a Two wheeler bearing registration No.TN 60 AZ 5518, the two wheeler bearing registration No.TN59 AT 7984 belonged to the 1st respondent, who drove the vehicle in a rash and negligent manner and came in a wrong side, dashed the two wheeler of the deceased, in which, the deceased died on the spot. Pursuant to the same, a case was registered in Crime No. 43/2017 under Section 304(A) IPC. Hence, they claimed a compensation



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of Rs.25,00,000/- from the respondent/appellant insurance company and the 2nd respondent/owner of the vehicle.

3. During trial, before the trial Court, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to P10 were marked. On the side of the appellant insurance company, the driver of the offending vehicle was examined as R.W.2 and no document whatsoever has been marked.

4. Based on both oral and documentary evidence and considering Ex.P7-certificate issued by the company, where the deceased was working, and Ex.P9 - the staff attendance register, the Tribunal has fixed the liability and negligence on the part of the driver of the offending vehicle and fixed the salary at Rs.15,000/-, future prospects at 40% [40% of Rs.15,000 ie., Rs.6,000/-]. Accordingly, fixed the total income of the deceased at Rs.21,000/- per month and after deducting 50% towards his personal expenses, the salary was fixed at Rs.10,500/-. The Tribunal has, thus, awarded a sum of Rs.24,03,000/- with interest with interest at 7.5% p.a. Aggrieved over the said compensation, the



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insurance company is before this Court with this appeal.

5. When the appeal was taken up for hearing, there is no appearance on the side of the respondents.

6. The learned counsel for the appellant would contend that the trial Court has not appreciated the manner of the accident and that the deceased was not wearing the helmet, which is mandatory, on the date of the accident and also drew our attention to the oral evidence of R.W.1. Hence, on this ground, the learned counsel contends that the award of the Tribunal may be modified.

7. We have given our anxious consideration to the rival submissions made by the learned counsel for the appellant and also perused the materials available on record.

8. P.W.3 is the occurrence witness, Ex.P4 is the rough sketch and Ex.P3 is the final report filed by the police. Admittedly, the police, after investigation of the crime, has fixed the liability on the part of the



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driver of the vehicle. He was also charge sheeted and faced the trial and hence, the evidence of R.W.1 should be scrutinized with caution. Since it may be a rough statement as per the evidence of R.W.1, we find that at the time of accident, the deceased was not wearing the helmet. Considering the evidence of P.W.2 with that of R.W.1 coupled with the documentary evidence, Ex.P3 final report, we find that both the vehicle involved are two wheelers. However, the vehicle, which, the deceased was riding, has more engine power and the deceased was not wearing the helmet and hence, following the settled proposition of law, we are inclined to fix 10% negligence on the part of the deceased and 90% negligence on the part of the driver of the offending vehicle. Accordingly, the finding of the trial Court with regard to negligence is hereby modified to that of contributory negligence at the rate of 90% on the driver of the appellant and 10% on the deceased.

9. On the point of quantum of compensation, we find that based on the oral evidence of P.W.3, Manager of the company, where the deceased was employed, coupled with Ex.P1-FIR, Ex.P9-Attendance Register and Ex.P10-Payment voucher, the tribunal has fixed the income



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of the deceased, applied proper multiplier. Taking note of the fact that the claim petitioners are the parents of the deceased, the tribunal has also deducted 50% towards personal expenses of the deceased, as per the judgment of the Supreme Court and hence, on the point of quantum of compensation, we do not find any error.

10. For the foregoing reasons, the quantum of compensation awarded by the Tribunal is confirmed. However, the contributory negligence of 10% is fixed on the deceased. Accordingly, the respondents/claimants are entitled to 90% of the award alone.

11. In the result, the civil miscellaneous appeal is allowed in part and the award passed by the tribunal is modified to the extent indicated above. The respondents 1 and 2/claimants are entitled to 90% of the total compensation, ie., Rs.21,62,700/- (Rupees twenty one lakhs sixty thousand and seven hundred only) along with interest at 7.5% from the date of petition till the date of realization. It is submitted by the learned counsel for the appellant that the entire amount has been deposited. The appellant is permitted to withdraw the remaining amount



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with interest, if any. The claimants are permitted to withdraw the entire award amount with proportionate interest and costs as apportioned by the Tribunal. No costs. Consequently connected Miscellaneous Petition is closed.

(T.K.R.,J.) (P.B.B.,J.)
06.11.2023

NCC : Yes/No
Index : Yes/No

RR

To

1.The Motor Accident Claims Tribunal,
I Additional District Judge, (FTC),
Theni

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

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