



C.M.A(MD)No.61 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	07.11.2023
Pronounced on	22.11.2023

CORAM:

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

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and

C.M.P.(MD)No.666 of 2019

The Divisional Manager,
United India Insurance Company Limited,
Tenkasi.

... Appellant / 2nd Respondent

-VS-

1.Esai Selvi
2.Lakshmi
3.Kanakka Nadar

... Respondents 1 to 3/Petitioners

4.Murugesan @ Saskthi Murugesan
5.ICICI Lombard Insurance Co. Ltd.,
ICICI Lombard House,
414, Veer Savarkar,
Prabadevi, Mumbai-25.

... Respondents 4 & 5/Respondents 1 & 3

PRAYER : Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicle Act, 1988, against the Judgment and Decree dated 16.03.2018



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WEB COPY passed in M.C.O.P.No.60 of 2017 by the Motor Accident Claims Tribunal (Additional District Judge), Tenkasi.

For Appellant	: Mr.G.Prabhu Rajadurai
For R1 to R3	: Mr.R.J.Karthick
For R4	: No Appearance
For R5	: Mr.P.Pethu Rajesh

JUDGMENT

RMT.TEEKAA RAMAN, J.

The Insurance company is the appellant herein. Challenging the award passed in M.C.O.P.No.60 of 2017, dated 16.03.2018 by the Motor Accident Claims Tribunal (Additional District Judge), Tenkasi, the appellant/Insurance Company has filed the above appeal on the ground of negligence and quantum.

2. The respondents 1 to 3 are the claim petitioners before the Tribunal claiming compensation for the death of the deceased Muppudathi, who is the husband of the first respondent herein, aged 26 years at the time of the accident. In the claim petition as well as the witness of P.W.1, the first respondent herein,



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would depose that on 20.01.2014 at about 04.30 p.m., on Tenkasi to Madurai National Highways near Kadayanallur Veterinary Hospital, when the deceased Muppudathi was riding his Hero Honda Motorcycle bearing Reg.No.TN-76-AA-0472 on the extreme left side of the road following traffic rules, a TATA ACE van bearing Reg. No.TN-76-P-6964 which was driven by its driver in a rash and negligent manner, dashed against the motorcycle from opposite side. In the said accident, the said Muppudathi sustained grievous injuries. Thereafter, he was taken to the private hospital at Nagercoil for treatment, where, he succumbed to the injuries on 21.01.2014.

3. In the counter statement filed by the Insurance Company, it is contended that the accident had taken place due to the rash and negligent driving of the deceased himself and the deceased was possessing only as LLR license at the time of the accident and therefore, the owner of the vehicles as well as the Insurance company of TATA ACE which is involved in the accident cannot be held with any liability.



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4. During the trial, on behalf of the claim petitioners, three witnesses were examined as P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.13. On behalf of the respondents, four witnesses were examined as R.W.1 to R.W.4 and marked Ex.R.1 to Ex.R.3 and on behalf of the third party, Ex.X1 and Ex.X.2 were exhibited.

5. On consideration of both oral and documentary evidence adduced before the Tribunal, the learned Additional District Judge has held that the accident had taken place due to the rash and negligent driving of the driver of the TATA ACE goods vehicle, which is insured with the present appellant herein and accordingly, held that only the owner of the TATA ACE vehicle and the appellant/Insurance company are jointly and severally liable to pay the compensation and accordingly, awarded a sum of Rs.30,26,000/-. Hence, the appeal.

6. The learned counsel appearing for the appellant/Insurance company would contend that the Tribunal has not rightly appreciated the evidence of R.W.3, the driver of the TATA ACE goods vehicle and also contend that the notional income fixed by the Tribunal is on the higher side.



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7. The learned counsel for the claim petitioners made submissions in support of the award.

8. This Court has given its anxious consideration for the rival submissions made by the respective parties and also perused the records.

9. P.W.2, the occurrence witness has categorically stated that while the deceased was riding his two wheeler, the TATA ACE vehicle driver was driven the vehicle in a rash and negligent manner and caused the accident. During the cross examination of P.W.2, Ex.R.1, Rough sketch prepared by the police was marked. We have perused Ex.P.13, charge sheet marked through P.W.3, Head Constable of the concerned Police Station. The police have filed charge sheet after investigation against the driver of the goods vehicle, namely, the first respondent before the Tribunal. The driver of the goods vehicle has not filed any counter statement, however, he was examined at the instance of the Insurance company as R.W.3. After perusing the evidence, we find that R.W.3 has not chosen to deny the manner of the accident narrated in the claim petition by filing the counter statement or filed any protest petition against the police, who have



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registered the case against him. After perusing the evidence of P.W.2, the occurrence witness and Ex.P.3 charge sheet, we find that the manner of the accident spoken to by P.W.2 would really be probable by Ex.R.1, Rough sketch and hence, on that score, we find that the version of R.W.3, the driver of the goods vehicle is only a sweeping statement to save his skin and accordingly, we have no hesitation to come to the conclusion that the evidence of R.W.3 is self serving statement and hence, we hold that the evidence of P.W.2 regarding the manner of the accident was duly corroborated and hence, we find that the finding rendered by the Tribunal that the accident has taken place due to the rash and negligent driving of the driver of the goods vehicle, which is insured with the appellant and consequently, both owner of the vehicle as well as the Insurance company are jointly and severally liable to pay the compensation, does not call for any interference and this point is answered accordingly.

10. On the point of quantum of compensation, we heard both the learned counsel.



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11. On the date of the accident, viz., on 20.01.2014, as per the driving license of the deceased under Ex.P.6, his date of birth is 20.02.1988 and hence, on the date of the accident, he was 26 years old and as per the certificate produced before the Tribunal, he is a Diploma as well as B.E as could be seen from Ex.P.7 to Ex.P.9. The Tribunal has rightly fixed Rs.500/- per day and arrived at Rs.15,000/- p.m., as notional income and future prospects, following the ***Pranay Sethi's case*** has adopted 40% and accordingly, Rs.15,000/- + Rs.6000/- = Rs.21,000/-. Since the deceased died leaving behind the three dependents, 1/3rd deduction and multiplier is 17 as per the ***Sarala Verma's case*** case and hence, we find that the pecuniary loss ascertained by the Tribunal is in accordance with law established on the above said decisions and that the compensation awarded under the conventional head is also in accordance with law and hence, we find that the quantum of compensation awarded by the Tribunal is in accordance with law does not call for any interference.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed and the award dated 16.03.2018 passed in M.C.O.P.No.60 of 2017 on the file of the Motor Accident Claims Tribunal Judge (Additional District Judge), Tenkasi, is



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confirmed. The appellant/Insurance company is directed to deposit the entire award amount with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the respondents 1 to 3/claimants are permitted to withdraw their shares together with interest and costs. No costs. Consequently, connected Miscellaneous Petition is closed.

[T.K.R., J.] [P.B.B., J.]

22 .11.2023

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

1. The Additional District Judge,
Motor Accident Claims Tribunal, Tenkasi.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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