



C.M.A(MD)No.302 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.10.2023**

CORAM:

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

**C.M.A(MD)No.302 of 2020
and
C.M.P(MD)No.3945 of 2020
and
C.M.P(MD)No.10465 of 2023**

The Branch Manager,
The IFFCO TOKIO General Insurance Company Ltd.,
88, Balaji Towers, First Floor,
Thadikombu Road,
Dindigul-641 012.

...Appellant/Respondent No.2

.VS.

1.Dhanalakshmi
2.Krishnaveni
3.Tamilarasi
4.Minor.Jawahar
5.Perumal
6.Anagammal

(The 4th minor petitioner is declared as
major as per the order of this Court
dated 12.10.2023 in

C.M.P(MD)No.10465 of 2023)

...Respondents Nos.1 to 6/
Petitioners

7.G.Ganesh Raveendran

...Respondent No.7/
Respondent No.1



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 21.11.2019 passed in M.C.O.P.No.247 of 2017 on the file of the Principal District Judge of Dindigul insofar as liability to pay compensation and quantum of compensation is concerned.

For Appellant :Mr.V.Sakthivel
For R1 to R6 :Mr.D.Venkatesh

JUDGMENT

[Judgment of the Court was made by **RMT.TEEKAA RAMAN.,J.**]

This Civil Miscellaneous Appeal is directed against the judgement and award made in M.C.O.P.No.247 of 2017, dated 21.11.2019, on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Dindigul and to set aside the judgment and award.

2. The Insurance company is the appellant. The Respondents 1 to 6 are the Claimants 1 to 6. Claimants 1 to 6 filed a claim petition in M.C.O.P.No.247 of 2017 before the Motor Accident Claims Tribunal, Principal District Court, Dindigul seeking compensation of Rs.50,00,000/- for the death of one Shankar in the road accident on 12.12.2016.



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3. The case of the claim petitioner before the Tribunal is that while the deceased Shankar was riding his two-wheeler bearing Registration No.TN-57-AH-4925, the car bearing Registration No.TN-38-CA-2954 insured with the appellant / Insurance Company driven by its driver in a rash and negligent manner came from the behind and dashed against the two-wheeler. Due to the impact, the deceased sustained head injury and subsequently succumbed to the injuries. Hence, the claimants have filed the claim petition.

4.Resisting the claim petition, the appellant filed a counter affidavit and has taken the plea that the rider of two-wheeler did not have any valid driving licence at the time of accident and he has not wear the helmet as per Section 129 of the Motor Vehicles Act and hence, contributory negligence has to be fixed on the rider of the two-wheeler. With regard to quantum and multiplier there is no serious dispute.

5.The claimants to substantiate their case examined the first claimant as P.W.1 and marked Exhibits P1 to P9.



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6.The Tribunal relying upon the evidence of P.W.1 & P.W.2, Ex.P1-FIR, came to the conclusion that the driver of the Car was responsible for the accident and awarded compensation of Rs.38,16,111/- along with interest at the rate of 7.5%. Challenging the award, the present appeal has been filed.

7. Heard Mr.V.Sakthivel, learned counsel appearing for the appellant and Mr.D.Venkatesh, learned counsel appearing for the respondents 1 to 6/claimants and also perused the records.

8.The learned counsel for the appellant submitted that the rider of the two-wheeler (deceased) did not have any valid driving licence at the time of accident and he has not wear the helmet, and therefore, contributory negligence 25% has to be fixed.

9. The learned counsel for the respondents 1 to 6/ claimants draw our attention to the evidence of P.W.2, who is the occurrence witness, had categorically stated that the deceased while driving the two-wheeler had wear the helmet, due to the impact, it was thrown out, subsequently, the deceased sustained head injury and the same was not refuted by adducing any independent witnesses,



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hence, there is no sustain in the arguments of the appellant/insurance company.

10. The appellant has filed this appeal only challenging the quantum and they have not disputed their liability and the manner of the accident.

11.P.W.1 has deposed that the deceased was working as Cook in Government Boys Hostel, Murugampatti and he was aged about 49 years old on the date of the accident. P.W.1 has stated that the deceased was earning Rs.26,153/- per month. Based upon the salary certificate Ex.P5 issued by the Special Tahsildar, the Tribunal has fixed Rs.26,153/- as monthly income and after adding 25% towards future prospects, the monthly income would come to Rs.32,691/-. His annual income assessed at Rs.3,92,292/-. Income Tax Rs.14,229/- was deducted. Hence, annual income is Rs.3,78,063/-. There are six dependants on the date of accident. Hence, 1/4th was deducted towards personal expenses of the deceased i.e., Rs.94,516/-. Thereby, his annual income is assessed as Rs.2,83,547/-. By adopting multiplier of '13', the Tribunal has awarded Rs.36,86,111/- towards loss of dependency. The Tribunal



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has awarded a sum of Rs.15,000/- towards loss of estate, Rs.50,000/- towards loss of love and affection, Rs.40,000/- for loss of consortium, Rs.15,000/- for funeral expenses and Rs.10,000/- for transport expenses. Altogether, the Tribunal has awarded compensation of Rs.38,16,111/-.

12. The another point raised by the learned counsel for the appellant is that the deceased was not having any valid driving licence, in this regard, P.W.1 had admitted her cross-examination that after payment of the fine amount only, vehicle was released. It is not the case of head on collusion, so long as there is no negligence on the part of the driver of the two-wheeler. It is clear that the car hit behind the two-wheeler, we are unable to accept the contention of the learned counsel for the Insurance Company. Accordingly, the said plea was rejected.

13. On the point of quantum, deduction of income, multiplier and award of consortium, we find that there is no excessive amount granted. The compensation awarded by the Tribunal is just and fair. Therefore, the award of the tribunal is confirmed.



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14.The Civil Miscellaneous Appeal is dismissed. The appellant

Insurance Company is directed to deposit the award amount with accrued interest and costs, less the award amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw their share amount as apportioned by the tribunal along with proportionate accrued interest and cost, less the amount already withdrawn, if any. No costs. Consequently, connected miscellaneous petitions are closed.

[T.K.R.,J.] [P.B.B.,J.]
12.10.2023

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

The Motor Accident Claims Tribunal-
cum-Principal District Court,
Dindigul.



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RMT.TEEKAA RAMAN,J.
AND
P.B.BALAJI,J.

am

JUDGMENT MADE IN
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12.10.2023