



C.M.A. (MD)No.644 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.644 of 2022

and

C.M.P.(MD)No.5517 of 2022

National Insurance Company Limited.,
Through its Divisional Manager,
No.37, C.S.N.High Road,
Tiruenlveli.

...Appellant/2nd Respondent

Vs.

1.Muppidathi Thangam
2.Esakkiammal
3.Kanagavallie

...Respondents 1 & 2/Petitioners
...3rd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award in M.C.O.P.No.854 of 2016 dated 27.10.2021 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court dealing with MCOP Cases, Tirunelveli.

For Appellant : Mr.J.S.Murali
For R1 & R2 : Mr.V.Sasikumar
For R3 : Exparte



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JUDGMENT

Challenging the quantum of compensation and the negligence fixed by the Motor Accident Claims Tribunal/Special Subordinate Court dealing with MCOP cases, Tirunelveli in M.C.O.P.No.854 of 2016, dated 27.10.2021, the present Civil Miscellaneous Appeal has been filed.

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

3.The brief facts, leading to the filing of the claim petition, are as follows:-

(i)On 07.04.2016 at about 12.00 noon, when the deceased was travelling in a motorcycle bearing Registration No.TN-76-V-6951 as a pillion rider from north to south on Tenkasi-Kadayam Main Road, a bus bearing Registration No.TN-76-J-0445 came from the opposite direction in a rash and negligent manner dashed against the motorcycle. As a result, the deceased sustained to injuries and succumbed. The rider of the motorcycle also sustained injuries.



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(ii) A case in crime No.94 of 2016 was also registered. The deceased was aged about 19 years at the time of accident and he was a Engineering student. The petitioners are the parents of the deceased. Hence, the claim petition was filed seeking compensation.

(iii) The second respondent before the Tribunal took a stand that the rider of the two wheeler drove the vehicle with two pillion riders, that too without any valid driving license. Further, they were all in inebriated condition at the time of accident. Hence, opposed the claim petition.

4. Before the tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondents R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R5 were marked.

5. The tribunal after considering the entire oral and documentary evidence on record and also considering the fact that the deceased was an Engineering student, had fixed the monthly income of the deceased at Rs.18,000/- and awarded the compensation as follows:



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S.No.	Head	Amount
1.	Loss of dependency	Rs.27,21,600/-
2.	Loss of Consortium	Rs. 40,000/-
3.	Loss of Estate	Rs. 15,500/-
4.	Funeral Expenses	Rs. 15,000/-
	Total	Rs.27,91,600/-

The total compensation amount is Rs.27,91,600/-. The tribunal had fixed 10% negligence on the part of the deceased and 90% negligence on the part of the driver of the offending vehicle/bus. Challenging the same, the present Civil Miscellaneous Appeal had been filed by the Insurance Company.

6.The learned counsel for the appellant contended that carrying three persons in a two wheeler itself is a violation. That apart, the rider and the pillion riders were inebriated condition. The evidence of R.W.1 and R.W.2 also establishes the same. The Tribunal without considering these factual aspects had fixed only 10% contributory negligence on the part of the deceased and the same has to be modified.



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7.The learned counsel for the respondents would submit that the Tribunal considering the evidence on record found that there is no evidence to show that the deceased or the rider of the motorcycle were inebriated condition. Hence, the Tribunal had rightly fixed the contributory negligence at 10% on the part of the deceased, which does not require any interference.

8.In view of the above submissions, now the point arises for consideration in this appeal is:

Whether the tribunal was right in fixing contributory negligence only at 10%?

9.The deceased along with two others were proceeding in a motorcycle, at that time the accident had taken place. This aspect had not been disputed. The fact remains that the deceased was proceeding in a motorcycle with three persons, which itself is a violation of the provisions of the Motor Vehicles Act. Two wheeler is meant for two persons only. If three persons are carried in a two wheeler, it will lead to consequences of losing the balance while riding the two wheeler. Therefore, the Tribunal ought to have fixed contributory negligence on



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the part of the rider and the deceased also. This Court is of the view that 10% contributory negligence has to be fastened on the rider of the two wheeler also. Accordingly, 20% contributory negligence is fixed.

10. Merely because of three persons are travelling in a two wheeler, that will not grant license to the offending driver to drive the vehicle casually without sufficient caution to avert the accident. Therefore, 80% contributory negligence is fixed on the driver of the offending bus.

11. Admittedly, the deceased was an engineering student. The Tribunal had fixed sum of Rs.18,000/- as monthly income and adopted proper multiplier. It is the contention of the learned counsel for the appellant that the Hon'ble Supreme Court of India in the case of *Meena Pawaia and others vs. Ashraf Ali and others* [2021 (2) TN MAC 790 (SC)], Rs.18,000/- was fixed as monthly income for an Engineering graduate. That accident took place in the year 2012. Whereas in the present case, the accident had taken place in the year 2016. Such view of the matter, this Court is of the view that the notional income adopted by the Tribunal does not require any interference. Hence, the compensation awarded under other heads remains unaltered.



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12. In such view of the matter, the appellant Insurance Company is directed to pay a sum of Rs.22,33,280/- (Rupees Twenty Two Lakhs Thirteen Three Thousand Two Hundred and Eight only) to the claimants as compensation. Accordingly, this Civil Miscellaneous Appeal is allowed.

13. The appellant is directed to deposit the compensation amount i.e., Rs.22,33,280/- (Rupees Twenty Two Lakhs Thirteen Three Thousand Two Hundred and Eight only) as modified by this Court with interest and costs from the date of petition till the date of realization to the credit of M.C.O.P.No.854 of 2016, on the file of the Motor Accident Claims Tribunal /Special Subordinate Court, Tirunelveli within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs.

26.04.2023

NCC : Yes / No
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N.SATHISH KUMAR, J.

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To

- 1.The Motor Accident Claims Tribunal
Special Sub Court, Tirunelveli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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