



C.M.A.(MD).No.1139 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2023

CORAM:

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

**CMA(MD) No.1139 of 2023
and CMP(MD) No.15350 of 2023**

Branch Manager
IFFCO TOKIO General Insurance Company Limited
Door No.82 Preetham Plaza I Floor
Chandrakanth Nagar
Ponmeni Bypass Road
Madurai Town
Madurai District

...appellant/
2nd respondent

Vs.

1.Pappathi

2.Thenammal

3.Minor Tharunika

(Minor 3rd respondent represented by
her mother and natural guardian
the first respondent herein)

... Respondents 1 to 3/
petitioners 1 to 3

4.Santhiyendran

... 4th Respondent/
1st respondent



C.M.A.(MD).No.1139 of 2023

WEB COPY

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 19.04.2022 in MCOP No.1 of 2021 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Srivilliputhur.

For Appellant : Mr.K.R.Shivashankari

For Respondents : Mr.I.Pinaygash for R1 to R3

J U D G M E N T

RMT.TEEKAA RAMAN, J.

By consent of both sides, the civil miscellaneous appeal is taken up for final hearing at the admission stage itself.

2. This Civil Miscellaneous Appeal is directed against the award and decree dated 19.04.2022 made in MCOP No.1 of 2021 by the Motor Accident Claims Tribunal, Principal Sub Court, Srivilliputhur.

3. The Insurance company is the appellant herein. Challenge is made to the award on the ground of liability as well as quantum. The



C.M.A.(MD).No.1139 of 2023

respondents 1 to 3 are the legal heirs of the deceased Rajeshwaran, who died in a road accident, which occurred on 27.04.2016. On the said date, the deceased was travelling in a two wheeler bearing registration No.TN60G0284. While so, the vehicle bearing Registration No.TN67X7466, which was driven in a rash and negligent manner, hit the two wheeler driven by the deceased, as a result of which, the deceased fell down and the vehicle run over the deceased. Pursuant to which, the deceased died on the way to hospital. The tribunal, considering the oral and documentary evidence adduced, came to the conclusion that the appellant insurance company is liable to pay the compensation at Rs.52,00,006/- with interest at the rate of 7.5%. Aggrieved against the said award, the insurance company is before this Court.

4.Heard the learned counsel for the appellant, the learned counsel for the respondents 1 to 3 and perused the materials available on record.



C.M.A.(MD).No.1139 of 2023

WEB COPY

5. In the present appeal, the factum and the manner of the accident and the deceased died in the accident; rash negligent driving of the driver of the offending vehicle, namely, the fourth respondent herein, are not in dispute. Accordingly, the finding rendered by the Tribunal is hereby confirmed.

6. The learned counsel for the appellant brought to our attention the counter statement filed before the tribunal to the effect that on the date of accident, the driver of the offending vehicle does not possess valid driving license. In order to substantiate the said plea, at the instance of the insurance company, on Court summons, the Junior Assistant attached to the Regional Transport Office, Theni, was examined as R.W.1 and Ex.R1 and Ex.R2 were marked.

7. On a combined reading of the oral evidence of R.W.1 coupled with the documentary evidence, ie., Ex.R1 and Ex.R2, we find that on the date of accident, the driving license of the driver of the offending vehicle has expired. It is the specific evidence of R.W.1 that it was not renewed. The tribunal has held that it might have been renewed



C.M.A.(MD).No.1139 of 2023

WEB COPY

in some other Regional Transport Office. Had there been any renewal in some other Regional Transport Office as pleaded by R.W.1, pursuant to Section 15(VI) of the Motor Vehicles Act, there should have been an intimation to the original Regional Transport Office, namely, the license issuing authority under the said Act and in the absence of any such intimation/endorsement, the Court cannot presume that it might have been renewed in some other office. In that view of the matter, fixing the liability on the insurance company cannot be sustained in the eye of law.

8. Accordingly, to the limited extent, it stands modified to the extent that in the absence of valid driving license, viz., Ex..R.2, the insurance company is not liable to pay the compensation and hence, the insurance company stands exonerated. However, following the decision of *Shamanna and another v. Divisional Manager, Oriental Insurance Company Limited and others [(2018) 9 SCC 650]*, this Court is of the considered view that pay and recovery would meet the ends of justice. Accordingly the insurance company is directed to pay the entire award amount and recover the same from the owner of the offending vehicle, ie., the fourth respondent.



C.M.A.(MD).No.1139 of 2023

WEB COPY

9. Coming to the quantum of compensation, we find that based on the salary certificate Ex.X1, ie., Rs.21,268/-, the notional income fixed by the tribunal is just and proper. However, as per Ex.P7, the date of birth of the deceased is 19.03.1983; accident had taken place on 27.04.2016 and hence, on the date of accident, the deceased was aged about 33 years and proper multiplier is 16 and not 17 as fixed by the tribunal. Accordingly, considering the age of the deceased, the multiplier is fixed at 16.

10. With regard to 50% of the future prospects, we find that it is in accordance with law and instead of deducting $1/3^{\text{rd}}$, it appears that the tribunal has deducted $1/4^{\text{th}}$. Hence, Rs.21,268 + 50% of future prospects = Rs.31,902/- and after deducting $1/3^{\text{rd}}$, the income is arrived at Rs.21,268/-. Accordingly, the loss of dependency and future prospects is arrived at Rs.40,83,456/- ($21268 \times 12 \times 16$).

11. On the other conventional heads, the compensation is re-assessed/modified as follows:



WEB COPY



C.M.A.(MD).No.1139 of 2023

Loss of income	= Rs.40,83,456.00
For transportation	= Rs. 15,000.00
For funeral expenses	= Rs. 16,500.00
for loss of estate	= Rs. 16,500.00
for loss of consortium	= Rs. 16,500.00
loss of love and affection (2 * 50000)	= Rs. 1,00,000.00

	Rs..42,47,956.00

12. In fine, the award of the tribunal is reduced from Rs.52,00,006/- (Rupees fifty two lakhs and six only) to Rs.42,47,956.00/- as follows:

Heads	Awarded by the tribunal (Rs.)	Modified/reduced	Final Compensation (Rs.)
Loss of dependency and future prospects	48,81,006	(reduced)	40,83,456
Loss of consortium to the 1 st respondent	1,32,000 (3 x 44,000) (granted for all claimants)	(reduced) (set aside for respondents 2 and 3)	16,500
Loss of estate	16,500	(confirmed)	16,500
Funeral expenses	16,500	(confirmed)	16,500
Transport expenses	2,000	Enhanced	15,000
Loss of love and affection to the respondents 2 and 3	1,50,000 (3x50,000)	Reduced	1,00,000.00 (2 x 50,000)
Damage to clothes	2,000	(set aside)	-
Total	52,00,006	(reduced)	42,47,956



C.M.A.(MD).No.1139 of 2023

WEB COPY

13. The quantum of compensation is reduced from Rs. 52,00,006/- (Rupees fifty two lakhs and six only) to Rs.42,47,956 /- (Rupees forty two lakhs forty seven thousand nine hundred and fifty six only).

14. Accordingly, the civil miscellaneous appeal is partly allowed as follows:

(i) The appellant insurance company is directed to pay the entire award amount and recover the same from the fourth respondent/owner of the offending vehicle;

(ii) The insurance company is directed to deposit the entire award amount of Rs.42,47,956.00/- (Rupees forty two lakhs forty seven thousand nine hundred and fifty six only) with interest at 7.5% from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of the judgment, less the amount already deposited, if any ;



WEB COPY

C.M.A.(MD).No.1139 of 2023

(iii) On such deposit being made, the claimants/respondents 1 and 2 are permitted to withdraw their respective shares as apportioned by the tribunal. As far as the minor share is concerned, the same shall be deposited in any one of the nationalized bank till the minor attains majority and the interest accrued thereon shall be withdrawn by the mother/natural guardian once in three months, only for the welfare of the minor.

No costs. Consequently connected Miscellaneous Petition is closed.

(T.K.R.,J.) (P.B.B.,J.)
10.11.2023

NCC : Yes/No
Index : Yes/No

RR

To

1.The Motor Accident Claims Tribunal,
Principal District Judge, Thoothukudi.

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



WEB COPY



C.M.A.(MD).No.1139 of 2023

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

RR

CMA(MD) No.1139 of 2022

10.11.2023