



C.M.A.(MD)No.354 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 21.12.2022

Delivered On : 25.01.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.354 of 2020

United India Insurance Company Ltd.,

its Branch Manager,

Seethalakshmi Complex,

Thirunagar, Madurai-625 006.

.. Appellant /2nd Respondent

Vs.

1.T.Vanitha

2.Minor.T.Nagalakshmi

3.Minor.T.Kaviya

4.Minor.T.Uma Maheswari

5.Minor.T.Kokila

(Minors 2 to 5 are represented by

their mother/natural guardian R1) ... Respondents 1 to 5 / Petitioners

6.M/s.Jayalakshmi Textiles Pvt.Ltd.,

Puliyuraan Road, Sempatti Village,

Aruppukottai Taluk,

Virudhunagar District.

... 6th Respondent / 1st Respondent



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 14.11.2019, made in M.C.O.P.No.34 of 2015, on the file of the Subordinate Judge - Motor Accident Claims Tribunal, Aruppukottai.

For Appellant : Mr.N.Dilip Kumar
For Respondents : Mr.G.Mariappan for R1 to R5
: No appearance for R6

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 14.11.2019, made in M.C.O.P.No.34 of 2015, on the file of the Subordinate Judge - Motor Accident Claims Tribunal, Aruppukottai. The appellant herein is the second respondent, the respondents 1 to 5 herein are the claimants and the **sixth respondent** herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.34 of 2015, is as follows:

On 20.12.2012, at about 8.15 pm, when the deceased- Thangapandi was travelling in a two wheeler bearing Registration No.TN-67-AC-7435 as a pillion rider, a bus bearing Registration No.TN-67-D-3929 came in a rash and negligent manner, from the opposite direction and dashed against the two



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wheeler. Both the pillion riders as well as the rider, by name, Sivakumar died on the spot. The deceased was working in a private institution as a Driver and he was earning Rs.20,000/-. The petitioners are his dependants and they claim a sum of Rs.50,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.34 of 2015, is as follows:

The deceased was travelling in a two wheeler along with 2 pillion riders which is against the policy conditions. The deceased and his friends were under the influence of alcohol at the time of accident. The accident has happened due to the rash and negligent driving of the rider of the two wheeler. F.I.R was closed as R.C.S in R.C.S.No.49 /2013. The rider of the two wheeler was mentioned as the accused, since he died in the accident, F.I.R was closed. The rider was not having valid driving licence. The petition to be dismissed.

4. Another person, by name, Kamalprasath, died in the same accident and a claim petition in M.C.O.P.No.57 of 2015 was filed before the Tribunal and in both the M.C.O.P.Nos.34 and 57 of 2015, a joint trial was conducted and a common judgment was pronounced by the Tribunal.



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5. In the joint trial, 4 witnesses were examined and 36 documents were marked, on the side of the claimants. 2 witnesses were examined and 8 documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.18,36,500/- to be paid by the second respondent.

6. Against the order, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal fixed the entire liability on the insurance company, which is wrong. It was a head on collision. The driver of the two wheeler was riding the vehicle with two pillion riders and he attempted to overtake a lorry, and in such process, he failed to notice the bus coming from the opposite direction. The driver of the bus was examined as a witness. The Tribunal failed to appreciate the evidence of the driver. The Tribunal failed to consider that the deceased was travelling as one of the two pillion riders. The deceased was a police constable. Driving licence of the rider of the two wheeler was not produced. The Criminal Court records were not marked through a competent person. The rider of the two wheeler alone was responsible for the accident. The deceased contributed to the accident as he was not wearing a helmet. The award is excessive. The deceased is liable for contributory negligence.



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7. On the side of the appellant, it is stated that the rider of the two wheeler and the deceased were liable for contributory negligence. Two pillion riders were taken by the rider of the two wheeler, the rider of the two wheeler was not having valid driving licence and that in a connected case in C.M.A(MD) No.119 of 2017 (United India Insurance Company Limited., V. Thilagavathi), dated 24.01.2021, this Court has held that the deceased was liable and the contributory negligence was fixed as 15%. A copy of the judgment was also produced. The respondent also admitted that in the connected case, 15% contributory negligence was fixed on the deceased.

8. In the connected case in C.M.A.(MD)No.119 of 2017, in paragraph No. 10, the Division Bench has come to a conclusion that the deceased was liable for 15% contributory negligence. In view of the decision taken by the Division Bench in the connected case, it is decided that the deceased is liable for 15% contributory negligence.

9. There is no dispute regarding the quantum. The Tribunal has fixed the notional income as Rs.7,500/-. After adding 40%, towards future prospects and after deducting 1/4th towards the own expenses of the deceased



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and by applying multiplier '17' the Tribunal awarded Rs.16,06,500/- towards loss of income, which is reasonable.

10. The Tribunal has awarded Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- for each of the claimant towards loss of consortium (Totally Rs.2,00,000/-) and awarded a total compensation of Rs.18,36,500/-, which is reasonable.

11. After deducting 15% (Rs.2,75,475/-) for the contributory negligence, the claimants are entitled to Rs.15,61,025/-.

12. Hence, this Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.18,36,500/- to Rs.15,61,025/-. The first claimant-wife of the deceased(R1 herein) is entitled to Rs.3,61,025/- with proportionate interest and costs and each of the minor claimant (R2 to R5 herein) is entitled to Rs.3,00,000/- (Totally Rs.12,00,000/-) with proportionate interest.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.15,61,025/ (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the



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date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount deposited, if any, shall be refunded to the appellant / Insurance Company.**

(iii) On such deposit being made by the appellant / Insurance Company, the first respondent herein / major claimant is permitted to withdraw her share amount as apportioned by this Court with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by her.

(iv) The Tribunal is directed to deposit the share of the minor claimants /respondents 2 to 5 herein with proportionate interest in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The claimants are not entitled for interest for the default period, if there is any.

25.01.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

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To

- 1.The Subordinate Judge -
Motor Accident Claims Tribunal,
Aruppukottai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.354 of 2020

25.01.2023