



C.M.A. (MD)No.632 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.632 of 2021

and

C.M.P.(MD) No.6108 of 2021

M/s.National Insurance Company Ltd.,
rep., by its Divisional Manger,
Having Office at 120, Aruvi Block,
1st Floor, St., Paul's Complex,
Bharathiyar Salai, Cantonment,
Trichy 620 001.

...Appellant/ 2nd Respondent

Vs.

1.Periyammal
2.Malaikannau
3.Bose
4.P.Kannappan

... Respondents 1 to 3/Petitioners 1 to 3
... 4th Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 08.06.2020 made in M.C.O.P.No.1314 of 2014 on the file of the Motor Accident Claims Tribunal, Special District Judge to deal with MCOP cases, Trichirappallai.

For Appellant : Mr. A.S.Mathialagan
For Respondents : Mr.N.Sudhagar Nagaraj
(for R1 to R3)
No appearance (for R4)



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed seeking to set aside the award and decree made in M.C.O.P.No.1314 of 2014 on the file of the learned Motor Accident Claims Tribunal, Special District Judge to deal with MCOP cases, Trichirappallai.

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

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i) The first petitioner is the wife of the deceased. The second and third petitioners are his sons.

(ii) On 25.09.2013, at about 7.30 pm., the deceased Muthu Goundar was traveling as a pillion rider in a Motor Cycle bearing Registration No.TN 55 Q 1158, which was rode by P.W.2 in very cautious manner from South-North direction in Madurai-Trichy National Highways road. When they nearing Karuppu Kovil in Valanadu Kaikatti, a JCB Earth Moving Equipment (MMV) vehicle bearing Registration No.TN 45 AZ 0408 belonged to the first respondent



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and insured with the second respondent came from the opposite direction on the wrong lane in a rash and negligent manner and dashed against the two wheeler. As a result of which, the deceased/pillion rider thrown out from the motor cycle and sustained multiple injuries and he was admitted in a Government Hospital, Trichy, immediately. Thereafter, he admitted in Atlas Hospital, Trichy, on the same day and discharged on 07.10.2013. During his treatment, his left leg was operated, again, he was admitted on 11.10.2013 and discharged on 14.10.2013. After his discharge from the hospital, he died on 21.10.2013. The deceased was earning a sum of Rs.10,000/- per month. Hence, the legal representatives/claimants filed MCOP petition.

4. The second respondent/insurer before the tribunal has took a stand that there was no fault on the part of the driver of the first respondent and only the rider of the Motor Cycle loss his control towards his right side and dashed against the JCB. Hence, he disputed the liability.

5. To substantiate the case before the tribunal on the side of the petitioners/claimants, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.13 were marked. On the side of the respondents, R.W.1 to R.W.3 were examined and



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Ex.R1 and Ex.R2 were marked. Ex.X.1 to Ex.X.5 were marked on the side of the third party.

6. After analysing the evidence available on record and based on the submission of R.W.2/driver of the JCB, in which, he himself admitted that the driver of the motor cycle came in a right direction and a crime has also been registered against him, the tribunal found that originally the driver of the JCB came in a wrong side and drove the vehicle in a rash and negligent manner and fixed the following compensation with interest at the rate of 7.5% per annum.

Head	Amount
Loss of Dependency	Rs.5,04,000/-
Consortium to the 1 st petitioner, the wife of the deceased	40,000/-
Parental Consortium to the petitioners 2 and 3, the sons of the deceased Rs.40,000/- each (40,000 x 2)	80,000/-
Medical expenses	96,632/-
Pain and suffering	25,000/-
Love and Affection	1,00,000/-
Loss of Estate	15,000/-
Funeral expenses	15,000/-
Transportation expenses	6,000/-
Total	Rs.8,81,632/-



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7. Against the compensation amount awarded by the tribunal, the appellant/insurance company filed this appeal. He also averred that there is a contributory negligent on the part of the rider of the two wheeler.

8. Heard the submissions made on either side and now, the point that arises for consideration is, whether the tribunal was erred in fixing the negligence on the part of the driver of the JCB.

9. A perusal of the evidence particularly P.W.2, who was the rider of the motor cycle, and the evidence of the driver of the JCB, who himself admitted that motor cycle came in right direction and infact motor cycle has hit on the right side of the JCB, that itself clearly shows that the JCB came in a wrong side. Therefore, the contention of the appellant that there was a contributory negligence also on the part of the rider of the motor cycle cannot be countenanced, unless the insurance company established the same.

10. The trial Court taking note of the fact that the deceased was an agriculturist at the relevant point of time and aged about 63 years, awarded a sum



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of Rs.9,000/- as income as per the judgment of this Court in **Muniyammal and 5 other Vs., B.Suresh and another** reported in **2015 (1) TN MAC 547 (DB)**, wherein this Court has fixed the notional value as Rs.10,000/- per month for the deceased having aged about 53 years. In view of the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs., Pranay Sethi and others** reported in **2017 (2) TN MAC 609(SC)**, the tribunal has not added any future prospects. In view of the principle laid down by the Hon'ble Supreme Court in the case of **Smt.Sarla Verma and Others Vs., Delhi Transport Corporation and another** reported in **2009(2) TN MAC 1 (SC)**, the tribunal deducted 1/3 and applied 7 multiplier applicable to the age of 63. Accordingly, the loss of dependency arrived at Rs.5,04,000/- and also awarded the first petitioner Rs.40,000/- for consortium and parental consortium to the second and third petitioners Rs.40,000/- each. Besides, the medical expenses and pain and suffering also awarded.

11. This Court is of the view that admittedly the deceased was dead and therefore, the question of awarding compensation under the head of pain and suffering does not arise at all. However, taking note of the fact that the deceased died on 21.10.2013 and he has been continuously under the treatment from the



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date of accident except for the last one week before his death. In such view of the matter, instead of awarding compensation under the head of pain and suffering, the deceased was awarded a sum of Rs.25,000/- under the head of attended charges. The tribunal has awarded a sum of Rs.1,00,000/- towards love and affection, with regard to this, this Court is of the view that such amount cannot be awarded, since the consortium has already been awarded to the petitioners. This Court do not find any infirmity in the award passed by the tribunal in respect of other heads. Accordingly, the award passed by the tribunal is confirmed less the amount of Rs.1,00,000/- awarded under the head of love and affection and totally a sum of Rs.7,81,632/- is the compensation, for which the petitioners are entitled with accrued interest and costs from the date of petition. Out of the said amount, the first petitioner/claimant is entitled to Rs.3,50,000/- together with proportionate interest. The claimants 2 and 3 are entitled to Rs.2,15,816/- together with interest.

12. Accordingly, the award of the tribunal is modified from Rs.8,81,632/- to Rs.7,81,632/- and the Civil Miscellaneous Appeal is allowed.

13.The appellant is directed to deposit the modified award amount of Rs.7,81,632/- (Rupees Seven Lakhs Eighty One Thousand Six Hundred and Thirty



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Two Only) as modified by this Court with accrued interest and costs at the first instance to the credit of M.C.O.P.No.1314 of 2014, on the file of the Motor Accident Claims Tribunal / Special District Judge to deal with MCOP cases, Tiruchirappalli, within a period of one month from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the first petitioner/claimant is entitled to Rs.3,50,000/- together with proportionate interest. The petitioners 2 and 3/claimants are entitled to Rs.2,15,816/- together with interest, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

10.03.2023

Index : Yes/No

Internet : Yes/No

Rmk

To

- 1.The Motor Accident Claims Tribunal,
Special District Judge to deal with MCOP cases, Trichirappallai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

Rmk

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