



C.M.A(MD)No.597 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.08.2023

Pronounced On : 14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.597 of 2019

M/s.United India Insurance Company Limited,
No.406, Periyakulam Road,
Theni Taluk, Theni District,
Rep.through its Branch Manager.

: Appellant / 2nd Respondent

Vs.

1.Aarthi

2.Minor Jeyavarshini

3.Minor Lakshand Vinoja

4.Ramani

5.Jeyaraman

: Respondents 1 to 5/Petitioners 1 to 5

6.Balasubramanian

: 6th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 23.08.2018 in M.C.O.P.No.79 of 2016 on the file of the Motor Accident Claims Tribunal, (Additional District Judge (FTC), Theni.



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For Appellant : Mr.C.Karthik

For Respondents : Mr.S.Vanchinathan, for R1 to R5.

: No Appearance for R6.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.79 of 2016, dated 23.08.2018 on the file of the Motor Accident Claims Tribunal, (Additional District Judge (FTC), Theni.

2. For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.

3. The appellant/insurer, who was made liable to pay compensation of Rs.43,59,000/- with interest at 7.5% per annum to the respondents 1 to 5/claimants 1 to 5 for the death of Vinoth, consequent to an accident occurred on 16.02.2016, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.



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4. The case of the claimants is that on 16.02.2016 at about 03.00 pm., the deceased was proceeding in a two wheeler bearing Registration No.TN-58-AF-5649 to the Government Medical College Hospital, Theni to see his wife and child, where his wife was admitted for second delivery and while he was returning along with his father Jeyaram and Malaisamy, who were in another two wheeler, near the bridge between Veerapandi Bye-pass road Upparpatti Villaku at about 07.50 pm., one Ashok Leyland DOST Van bearing Registration No.TN-60-M-3782, which came in the opposite direction in a rash and negligent manner, had dashed against the Vinoth and caused grievous injuries and he succumbed to the injuries on the spot itself and that the accident was occurred only due to the rash and negligent driving of the van driver.

5. The defence of the first respondent is that the two wheeler rider Vinoth was riding his bike without following the traffic rules and he himself dashed against the van; that the petitioners had influenced the police officials and filed a case against the van driver; that the van was insured with the second respondent and the policy was in force and that in case, if the Court decides that the accident had taken place due to the negligence of the van driver, the second respondent is liable for the claim.



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6. The defence of the second respondent/Insurance Company is that the deceased without wearing protective cover, drove the vehicle so rashly on the wrong side of the road and invited the accident; that the accident was occurred only due to the rash and negligent riding of the two wheeler and that the compensation claimed is excessive and without any basis.

7. During trial, the claimants have examined the fifth petitioner Jeyaram as P.W.1 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The second respondent/insurer has examined two witnesses Malaisamy and Thiyagarajan as R.W.1 and R.W.2 respectively and exhibited one document as Ex.R.1. The first respondent has examined himself as R.W.3 and exhibited two documents as Ex.R.2 and Ex.R.3.

8. The learned trial Judge, upon considering the evidence both oral and documentary, has passed the impugned award, dated 23.08.2018, holding that the van driver was responsible for the accident, directed the appellant/insurer to pay compensation of Rs.43,59,000/- with interest at 7.5% per annum from the date of petition till the date of realization within two months from the date of receipt of copy of that order. Aggrieved by the impugned award mulcting liability, the insurer has preferred the present appeal.



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9. The points for consideration are :

(i) Whether the Tribunal erred in deciding that the van driver alone was responsible for the accident, despite showing that the deceased alone came to the wrong side of the road and dashed against the right side door of the van through the evidence of the van driver R.W.1 and the damages caused to the both the vehicles and the evidence of R.W.2/Motor Vehicle Inspector, who conducted the inspection of both the vehicles.?

(ii) Whether the quantum of compensation awarded at by the Tribunal is just and proper and is in accordance with law ?

(iii) To what other reliefs, the parties are entitled ?

10. The claimants, in order to prove the mode of accident, have examined the fifth claimant, who is none other than the father of the deceased as P.W.1 and P.W.1 would reiterate the contentions raised in the claim petition with regard to the mode of accident. P.W.1 would say that after seeing the child born to his son, was returning in a two wheeler along with Malaisamy; that his son Vinoth was proceeding in another two wheeler; that there was a distance of 100 meters between the two vehicles; that they were proceeding from north to south and that the van, which came in the opposite directions, had dashed against the



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said Vinoth. During cross examination, it was suggested that P.W.1 had not witnessed the accident and that they had set-up a case as if, they have witnessed the accident and that the same were denied by the witness P.W.1.

11. No doubt, on the basis of the complaint lodged by P.W.1, F.I.R., came to be registered against the van driver and charge sheet came to be filed against the van driver.

12. The second respondent, in order to prove their defence, has summoned and examined the van driver as R.W.1. R.W.1 in his evidence would say that he was proceeding in his mini load vehicle from Cumbum to Theni; that when he was proceeding near Upparpatti Vilakku at about 07.50 pm., two wheeler which came in the opposite direction in a rash and negligent manner dashed against the right side door of the van and he died on the spot itself; that 4 to 5 persons, who were passing, came to the occurrence spot, but his relatives had not turned up at that time and that subsequently, he surrendered before the Police along with his vehicle. He would further submit that when he was proceeding on the left side of the road, the deceased came to the right side of the road and dashed against the van and that the accident was occurred only due to the negligence of the deceased.



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13. The second respondent has also summoned and examined the Motor Vehicle Inspector as R.W.2, who had admitted the inspection of two vehicles and issued Motor Vehicles Report under Ex.R.1 series. R.W.2 would say that both the vehicles' drivers were having driving license at the time of accident; that driver door to the mini load vehicle was damaged and whereas two wheeler has suffered front side damages. He would say that in case of head on collusion, the mini load vehicle would have suffered damages on the front side. It is evident from Ex.R.1 series that the following damages were noticed in the two wheeler;

“Fork bend. Wind shield broken. Head light indicator broken, Front mudguard broken, bumper bend, Fuel tank damaged.” But the Mini load vehicle driver door got damaged.

14. Admittedly, as rightly pointed out by the learned counsel for the appellant/Insurance Company, the Tribunal has not at all considered the evidence of R.W.1 and R.W.2 and by only relying on the evidence of P.W.1 and Ex.P.1/FIR, the Tribunal has come to a decision that the accident was occurred only due to the rash and negligent driving of the van driver.



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15. As rightly contended by the learned counsel for the appellant that though the claimants have alleged that P.W.1 along with Malaisamy were proceeding in a separate two wheeler behind the deceased, they have not chosen to examine the said Malaisamy. Both the claimants as well as the respondents have not produced the rough sketch prepared by the jurisdictional Police during investigation.

16. Considering the evidence of P.W.1 and R.W.1 and also the damages caused to the two wheeler and mini load vehicle, this Court has no hesitation to hold that the deceased has also contributed to the accident and this Court fixed the same at 25 %.

17. Now turning to the quantum of compensation, it is the specific case of the claimants that the deceased was working as Manager in the Agricultural Department and was getting consolidated pay of Rs.20,000/- per month. P.W.1 father of the deceased would admit that his son was working on temporary basis and that he was getting monthly salary of Rs.20,000/-.

18. The claimants have also produced the letter sent by the Joint Director of Agricultural/Project Director, Atma, Theni to P.W.1, wherein it has been



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stated that he was paid consolidated pay of Rs.10,672/- for a period upto 16.02.2016. It is evident from Ex.P.12 that the deceased had a Master Degree in (Agriculture)-Agricultural Extension from Annamalai University.

19. Considering the above, fixing the monthly income at Rs.20,000/- cannot be found fault with. The Tribunal as per the decision of Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has rightly added 40% of income towards future prospects. Since there are five claimants, the Tribunal has rightly deducted $\frac{1}{4}$ of income towards personal and living expenses of the deceased.

20. The Tribunal, taking note of the postmortem certificate, has fixed the age of the deceased as 30 years at the time of accident and that the same was not disputed by the insurer. As per the decision of Hon'ble Supreme Court in **Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the Tribunal has rightly applied the multiplier '17' and as such the loss of dependency would be Rs.42,84,000/- (Rs.21,000 x 12 x 17).



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21. Our Honourable Apex Court in *National Insurance Company Limited vs. Pranay Sethi and others* reported in **2017 ACJ 2700**, has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently Honourable Supreme Court in *Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others* reported in (2018) 18 SCC 130, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Honourable Apex Court in *The New India Assurance Company Ltd. Vs. Smt.Somwati and others*, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in *Pranay Sethi's* case. But, at the same time, they have specifically observed that no amount should be awarded under separate head of loss of love and affection.



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22. Considering the above, the claimants 2 and 3 being the children are entitled to get Rs.40,000/- each, towards parental consortium and the claimants 4 and 5 being the parents of the deceased are also entitled to get Rs.40,000/- each, towards filial consortium. The Tribunal has rightly awarded Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads.

23. Considering the above, this Court decides that the claimants are entitled to get compensation under the following heads:

Head of compensation	Amount awarded by the tribunal	Amount confirmed/modified by this Court
Loss of dependency	Rs. 42,84,000/-	Rs. 42,84,000/-
Loss of consortium	Rs. 40,000/-	Rs. 40,000/-
Parental consortium (claimants 2 and 3)	-	Rs. 80,000/-
Filial consortium (claimants 4 and 5)	-	Rs. 80,000/-
Transportation Charges	Rs. 5,000/-	-
Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
Loss of estate	Rs. 15,000/-	Rs. 15,000/-
Total	Rs. 43,59,000/-	Rs. 45,14,000/-



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24. In view of the above, the claimants are entitled to get total compensation of **Rs.33,85,500/-**. (Rs.45,14,000/- - (25/100). Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

25. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation amount is reduced from **Rs.43,59,000/-** to **Rs.33,85,500/-** with interest at 7.5% per annum. Out of the said compensation amount, the first claimant is entitled to get **Rs.12,85,000/-**, with accrued interest and costs and the claimants 2 and 3 are entitled to get **Rs.7,00,000/-** each. The fourth claimant is entitled to get **Rs.5,00,000/-** and the fifth claimant is entitled to get **Rs. 2,00,500/-**. The Appellant is directed to deposit the modified award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the first, fourth and fifth claimants are permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The Tribunal is directed to deposit the share of the minor



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claimants in any one of the Nationalized Bank in a fixed deposit scheme, till they attain majority. 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 the minors. Parties are directed to bear their own costs.

14.09.2023

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

- 1.The Motor Accident Claims Tribunal,
(Additional District Judge (FTC), Theni.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-delivery order made in
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