



C.M.A(MD)No.598 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.02.2023

CORAM

**THE HON'BLE DR JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.598 of 2019

and

C.M.P(MD)No.7298 of 2019

The Divisional Manager,
National Insurance Company Limited,
Divisional Office,
3-A, North Veli Street,
Near Sethupathi Higher Secondary School,
Madurai-625 001. .. Appellant/2nd Respondent

Vs.

1.R.Dhanalakshmi
2.Minor R.Rashmi
*(Minor R2 is represented through
her mother, the first respondent
herein)*

..1 &2 Respondents/Petitioners

M.Devi (Died)

3.S.Velusamy

.. 3rd Respondent/1st Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying
this Court, against the judgment and decree made in M.C.O.P.No.1999 of
2015 dated 02.02.2019 on the file of the Motor Accidents Claims Tribunal,
IV Additional District Court, Madurai.



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For Appellant :Mr.J.S.Murali
For R1 & R2 :Mr.Babu Rajendran

JUDGMENT

DR G.JAYACHANDRAN,J.
and
K.K. RAMAKRISHNAN,J.

This Civil Miscellaneous Appeal is preferred by the Insurance Company, being aggrieved by the quantum and apportionment of negligence.

2.On 25.04.2015, one Ravi was driving Honda City Car bearing Registration No.TN-60-H-3472. At about 10.00 p.m., near immanuel weigh bridge, Thoothukudi at Thiruchendur to Madurai Highways he dashed against the stationed lorry bearing Registration No.TN-04-M-5926. The accident took place to avoid from hitting the vehicle moving ahead and turned towards extreme left side of the road. The said Ravi, who dashed the car against the stationed lorry, sustained serious injuries and died on the spot. One of the occupant was taken to the hospital also succumbed to the injuries later. A case was registered in Crime No.150 of 2015 for the



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offence under Section 304(A) of IPC against the driver of the trailer lorry.

For the death of the said Ravi, the claim petition filed by his wife, minor daughter and mother claiming compensation of Rs.1 crore. On the premise that the deceased Ravi died in a motor accident so his dependents are entitled for compensation from the second respondent Insurance Company, which has indemnified the first respondent owner of the Trailer lorry. Pending trial, the third respondent, the mother of the deceased died and the same is recorded.

3.The loss of income and damages was estimated at Rs.1 crore on the premise that the deceased Ravi was gainfully employed as an Officer in Kotak Mahindra Bank Limited, Madurai Branch and earning a sum of Rs.35,756/- per month and at the time of accident, he was 35 years old and he had a bright prospects. His sudden death has caused both monetary and emotional loss to the petitioners.

4.The said claim petition was contested by the Insurance Company on the ground that the accident took place wholly due to the rash and negligent driving of the deceased, who has not noticed the parked lorry on the extreme



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left of the road in the parking area with parking lights on. Further, the claim petition is bad for not impleading the insurer of the car.

5.Before the Tribunal, to prove the claim, the wife of the deceased and two other witnesses were examined. To prove the accident and income of the deceased Ex.P.1 to Ex.P.14 were marked on the side of the claimants. On the side of the respondent, the lorry driver was examined as R.W.1 to prove that the accident had occurred only due to the negligence of the deceased and Ex.R.1 and Ex.R.2 were marked.

6.The Tribunal, after due consideration of the evidence, particularly, Ex.R.1, the photo copy of the rough sketch as well as the evidence of R.W.1 and the evidence of P.W.2, had awarded a sum of Rs.64,77,424/-, after fixing the negligence on the part of the deceased as 40% and the negligence on the part of the lorry driver as 60%. The Tribunal, applying the principles laid down in **2017 (2) TNMAC 609(SC) in the case of National Insurance Company Limited Vs. Pranay Sethi and others**, has ascertained the loss as below:



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Particulars	Amount(Rs.)
Loss of income	64,07,424/-
Funeral expenses	15,000/-
Loss of estate	15,000/-
Loss of consortium to the 1 st petitioner	40,000/-
Total	64,77,424/-

7.In this appeal, the Insurance Company claims that when the negligence is totally attributed to the deceased, the insurer of the lorry need not pay any compensation.

8.To support the said argument, the learned counsel appearing for the appellant/Insurance Company would draw the attention of this Court to the rough sketch/Ex.R.1, wherein the lorry is parked shown in the mud road on the extreme left side of the road and the place of occurrence is a highways between Madurai to Thoothukudi Port. Also rely upon the evidence of R.W. 1, who is the driver of the stationed lorry. The learned counsel would further submit that while the income of the deceased, as per the salary certificate is to be assessed with income tax, the Tribunal has not deducted income tax liability.



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9. On perusing Ex.R.1, which was relied on by the learned counsel for the appellant, this Court finds that the accident has occurred when the deceased hit the stationed lorry, but, the rough sketch indicates that the lorry was not parked in the parking area. It appears that the driver parked the lorry near the hotel located on the service road. Therefore, contributory negligence as apportioned by the trial Court at 40:60 ratio cannot be considered as perverse. But, in view of this Court, it is both the lorry driver as well as the deceased car driver are equally responsible for this accident. If the lorry driver had taken sufficient care and parked his vehicle with all necessary indicators or if the deceased driver of the car had properly noticed the stationed lorry, the accident could have been averted. But the evitable accident had occurred due to the contribution of both the vehicle drivers equally. Therefore, the contributory negligence is to be fixed equally.

10. As far as the non-deduction of income tax is concerned, the contention of the Insurance Company has to be upheld. Therefore, the award of the Tribunal is modified. The negligence is fixed as 50% on the part of the lorry driver and 50% on the part of the deceased car driver. Out of Rs.64,77,424/- 50% toward contribution is deducted. Then the



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compensation is Rs.32,39,712/- out of which, 10% is deducted towards Income tax, then the amount payable is Rs.32,39,712/- and 10% is deducted towards income tax liability is Rs.58,29,681.60/- (Rs.64,77,424/- - Rs. 6,47,742.40) with 7.5% interest from the date of filing till the date of realization. The apportionment of the award amount is also stand modified. The award amount between two surviving claimants is also modified to the effect that both will be entitled to get 50% each. Compensation awarded by the Tribunal under the unconventional heads are confirmed.

11.In view of the above, the judgment and decree of the trial Court passed in M.C.O.P.No.1999 of 2015, dated 02.02.2019, is modified and the award is reduced from Rs.38,86,454/- to Rs.30,15,741/- with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization. The award amount shall be apportioned between the wife and daughter of the deceased equally.

12.The learned counsel appearing for the appellant/Insurance Company submitted that the entire award amount along with accrued interest had already been deposited. If it is so, the first respondent/claimant



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is entitled to withdraw 50% of the aforesaid modified amount with interest and cost. The share of the award amount payable to the minor daughter shall be kept in fixed deposit in any nationalized bank, till she attains majority, permitting the mother as guardian to draw the interest. The excess amount, if any, shall be refunded to the appellant/Insurance Company.

13.In the result, this Civil Miscellaneous appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

(G.J.,J.) (K.K.R.K.,J.)
10.02.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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To

- 1.The Motor Accident Claims Tribunal,
IV Additional District Court,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras
High Court,
Madurai.



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