



C.M.A(MD).No.744 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2023

**PRONOUNCED ON : 04.05.2023
CORAM**

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.744 of 2019

The Oriental Insurance Company Limited
Represented through its Branch Manager
42/3, New Scheme Road
Second Floor, Pollachi
Pollachi Post 642 001

... Appellant

vs.

1.A.Innasiraja

2.Arokiyapichaimani

3.V.Karupusamy

4.Thirumoorthi

...Respondents

(Respondents 3 and 4 remained
exparte before the lower Court)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgement passed in M.C.O.P.No.105 of 2016 dated 24.09.2018 on the file of the Motor Accidents Claims Tribunal Cum Additional District Judge (FTC), Theni.



C.M.A(MD).No.744 of 2019

For Appellant : Mr.E.Chandrasekaran

For R1 & R2 : Mr.S.Louis

R3 & R4 : Exparte

JUDGMENT

The appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Theni in MCOP.No.105 of 2016 on the ground of negligence and quantum.

2.The claimants who are the parents of the deceased had contended that the deceased was undergoing 3rd year B.E.Degree Course in Anna University Engineering College at Dindigul while the accident happened on 09.03.2016. They have further contended that on 09.03.2016 at about 7.10 p.m when the deceased was driving a two wheeler from Dindigul-Ottanchathram along with his friend Ganesan as a pillion rider, the lorry belonging to the first respondent and driven by the second respondent came from the opposite direction and dashed against the two wheeler. In the said accident, the deceased sustained serious injuries and he passed away after reaching the hospital.



C.M.A(MD).No.744 of 2019

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3. According to the claimants, the accident has happened only due to the rash and negligent driving of the second respondent. The claimants have further contended that the deceased had also completed a course of mobile phone servicing and therefore, he was doing a part time work of cell phone servicing and he was earning a sum of Rs.15,000/- p.m. The claimants have made a claim for Rs.25,00,000/.

4. The owner and driver of the offending vehicle had remained exparte and the insurance company had filed a counter contending that the accident has happened only due to the rash and negligent driving of the deceased person who was not holding a proper driving license at the relevant point of time. The insurance company had further contended that the lorry driver was also not having a valid driving license at the relevant point of time. They have also questioned the quantum of compensation.

5. The Tribunal after considering the oral and documentary evidence relied upon Exhibit P1-F.I.R and the evidence of PW1 and PW2, had arrived at a conclusion that the accident has happened only due to the rash and negligent driving of the lorry driver. The Tribunal further found that the deceased being a 3rd year Engineering College Student, the



C.M.A(MD).No.744 of 2019

notional income could be fixed at Rs.15,000/- and added 40% towards future prospects. 50% was deducted towards personal expenses and the monthly income was arrived at Rs.10,500/- and by applying the multiplier of 18, a total compensation towards loss of dependency was arrived at Rs.22,68,000/-. After adding damages under conventional heads, the total compensation is Rs.24,03,000/-. This award is under challenge in the present appeal.

6.The learned counsel for the appellant had contended that the accident has happened only due to the rash and negligent driving on the part of the deceased person. Even assuming that there was some negligence on the part of the lorry driver, there was also some negligence on the part of the deceased person. This fact was not properly appreciated by the Tribunal.

7.He had further contended that the deceased had died due to the head injury and admittedly, he was not wearing headgear at the time of the accident and that should be considered to be a contributory negligence and 15% should have been reduced from the compensation for the said contributory negligence. He had further contended that the



C.M.A(MD).No.744 of 2019

Tribunal had erroneously fixed the notional monthly income of a 3rd year Engineer College Student as Rs.15,000/-. Hence, he prayed for allowing the appeal.

8.Per contra, the learned counsel for the respondents had relied upon the Judgement of the Hon'ble Supreme Court reported *in 2021(2) TN MAC 709(SC) (Meena Pawaia and others Vs. Ashraf Ali and others)* and contended that the Hon'ble Supreme Court was pleased to fix the notional income at Rs.14,000/- per month for a 3rd year Engineering College Student for an accident that has taken place in the year 2012. Therefore, the Tribunal cannot be found fault with for fixing the notional income at Rs.15,000/- for an accident that has taken place in the year 2015. He had further contended that no such defence has been raised by the insurance company in their counter affidavit that the non-wearing of the headgear has resulted in the death. Therefore, such a plea cannot be raised for the first time in the appeal.

9.The learned counsel for the respondents had further contended that the Tribunal had fixed lesser amount for funeral expenses, loss of love and affection and loss of estate. The Tribunal has also not



C.M.A(MD).No.744 of 2019

considered the fact that as a part time employee, the deceased was receiving a monthly income of Rs.15,000/-. Therefore, the compensation awarded by the Tribunal is very conservative and he prayed for enhancing the award.

10.I have considered the submissions made on either side and perused the materials available on record.

11.The deceased is a 3rd year Engineering Student who met with an accident on 09.03.2016 while driving a two wheeler. According to the claimants, the driver of the lorry coming from the opposite direction, had driven the said vehicle in a rash and negligent manner and the same as resulted in the accident. However, it is the case of the insurance company that the accident has happened only due to the rash and negligent driving of the two wheeler driven by the deceased person.

12.At the time of the accident, one Ganesan was the pillion rider which was driven by the deceased. He had been examined as PW2. In his chief examination, he has specifically contended that the accident has taken place only due to the rash and negligent driving on the part of the



C.M.A(MD).No.744 of 2019

lorry driver who had dashed against the front portion of the two wheeler. The said deposition has not been discredited in the cross examination done by the insurance company. Moreover the lorry driver who is arrayed as the sixth respondent in the claim petition has not been examined in order to prove that the total negligence is on the part of the deceased or some contributory negligence is on the part of the deceased person. When there is no contra evidence on the side of the insurance company, this Court is not in a position to accept the contention that the accident has taken place due to the negligence on the part of the deceased or there was some kind of contributory negligence on the part of the deceased person.

13.As far as the quantum is concerned, as rightly contended by the learned counsel appearing for the respondents, the Hon'ble Supreme Court has taken the notional income of 3rd year Engineering College Student at Rs.14,000/- per month for an accident that has taken place in the year 2012. In the present case, the accident has taken place in the year 2016. Therefore, this Court could not find fault with the Tribunal for



C.M.A(MD).No.744 of 2019

fixing Rs.15,000/- as notional income for a 3rd year Engineering College Student. However, the learned counsel appearing for the respondents had contended that the Tribunal has not taken into consideration the fact that the deceased was rendering mobile phone service and Exhibits P7 and P8 have been marked to the effect that he has undergone a course of mobile phone servicing. Though certain certificates have been produced, there are no records that he was earning a sum of Rs.15,000/- per month through his part time job. Therefore, this Court is not inclined to accept the said contention of the learned counsel for the respondents.

14.As far as the conventional heads are concerned, a sum of Rs.15,000/- was awarded towards funeral expenses, a sum of Rs.1,00,000/- was awarded towards loss of love and affection, Rs.15,000/- has been awarded for loss of estate. This Court does not find that the said award is in any way excessive or unreasonable. Therefore, this Court is of the view that the total quantum of award namely Rs.24,03,000/- is reasonable and does not call for any interference.



C.M.A(MD).No.744 of 2019

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15.The learned counsel for the appellant had further pointed out that the deceased had died due to head injury and he was not wearing headgear at the relevant point of time. Therefore, he had prayed for deduction of 15% from the total award amount towards contributory negligence. Therefore, this Court is of the view that 10% of the amount could be deducted towards contributory negligence for not wearing helmet. After deducting 10%, total compensation amount could be arrived at Rs.21,62,700/-. The said amount will carry interest at the rate of 7.5% p.a. from the date of filing of the claim petition.

16.In view of the above said deliberations, the award of the Tribunal namely Rs.24,03,000/- is hereby modified and reduced to Rs.21,62,700/-. The appellant Insurance Company is directed to deposit the modified compensation of Rs.21,62,700/- with 7.5% interest per annum from the date of claim petition till the date of deposit, less the amount already deposited, if any, to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant is permitted to withdraw a sum of Rs.10,81,350/- and the second claimant is permitted to withdraw



C.M.A(MD).No.744 of 2019

a sum of Rs.10,81,350/- with interest by filing a formal permission petition before the Tribunal. The Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs.

04 .05.2023

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

1.The Motor Accidents Claims Tribunal
Cum Additional District Judge (FTC),
Theni.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD).No.744 of 2019

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.744 of 2019

04.05.2023