



C.M.A.(MD).No.481 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 19.10.2023

Delivered on: 09.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A.(MD).No.481 of 2020

and

C.M.P.(MD)No.5325 of 2020

The Branch Manager,

Bajaj Allianz General Insurance Company Limited,

184/25 1st Floor, KPS Shopping Arcade,

Bye-Pass Road, Hotel Lakshmi Bhavan,

Madurai District.

... Appellant / Respondent No.2

Vs.

1.Bhuvaneswari

2.Minor.Sumitha

3.Minor.Athiban

(Minors 2nd & 3rd Respondents are represented

by their mother and natural guardian,

1st Bhuavaneswari)

... Respondents 1 to 3 / Petitioners

4.M/s.Senthamarai Transport Madurai,

788,Anbu Nagar, Madurai District. ... 4th Respondent/1st Respondent

5.Bose

... 5th Respondent/3rd Respondent

6.Lakshmi

... 6th Respondent/4th Respondent



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Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.1809 of 2017, dated 06.03.2020, on the file of the Motor Accident Claims Tribunal VI Additional District Court, Madurai.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.P.Bala Subramanian
Assited by Mr.A.Haja Mohideen
for R1 to R3

: Mr.S.M.A.Jinnah for R5 & R6

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Appeal is at the instance of the Insurance Company, aggrieved by the award in in M.C.O.P.No.1809 of 2017, dated 06.03.2020, on the file of the Motor Accident Claims Tribunal VI Additional District Court, Madurai, to the tune of Rs.81,70,500/- towards compensation to the legal representatives of the deceased, one Manimaran.

2. The case of the respondents, as claimants was that when the deceased - Manimaran was driving a Bolero Car, on 14.08.2017 and at about 11.45 pm., the first respondent's bus driver drove the bus in a rash



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and negligent manner, resulting in the accident and the death of the said Manimaran, a couple of days, later at the hospital. The claimants stated that the deceased was earning Rs.40,443/- per month and was supporting their entire family and that the respondents were liable to pay a compensation of Rs.1,30,00,000/-.

3. The appellant, as second respondent filed its counter stating that the accident occurred only because of the negligence on the part of the deceased and not because of any alleged rash and negligent driving of the first respondent is bus driver. The claims under various heads were also disputed, as being arbitrary.

4. Before the Tribunal, the wife of the deceased was examined as P.W.1 and two witnesses, viz., Senthamizhselvan and Gunasekaran were examined as P.W.2 and P.W.3 and 18 documents were marked as Ex.P1 to Ex.P18 on the side of the claimants. On the side of the respondents, 3 witnesses were examined as R.W.1 to R.W.3 and 7 documents were marked as Ex.R1 to Ex.R7.



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5. The Tribunal also found that the accident occurred only because of the rash and negligent driving of the first respondent driver. The Tribunal also relying on Ex.P15 - salary slip and the evidence of P.W.3, fixed the salary of the deceased at Rs.40,443/- per month, and applying a multiplier of '16' and including conventional heads, arrived at a total compensation of Rs.81,70,500/-.

6. The said award of the Tribunal is challenged by the appellant herein, mainly on the grounds that the deceased contributed to the accident, by his negligent driving and that he was not wearing a seat belt at the time of accident, which was also not taken note of by the Tribunal. He would further contend that the parents of the deceased, who were also living separately could not be said to be dependents on the income of the deceased and under such circumstances, the deduction of 1/4th towards personal expenses was challenged on the ground that the proper deduction would only be 1/3th. Before the Tribunal, a ground has also been raised with regard to deduction 10% alone towards income tax. As the income, after adding future prospects, placed the deceased's income in the next



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slab, a higher deduction ought to have been made by the Tribunal.

7. We have heard Mr.J.S.Murali, learned counsel for the appellant and Mr.P.Balasubramanian, learned counsel for the respondents 1 to 3 /claimants and Mr.S.M.A. Jinnah, learned counsel for the respondents 5 and 6. We have also perused the records and the award passed by the Tribunal.

8. With regard to the plea of contributory negligence, though the driver of the vehicle has been examined, primarily the Tribunal has relied on the evidence of P.W.2 regarding the manner of the accident and also the F.I.R - Ex.P1 and final report – Ex.P3 and come to the conclusion that the accident occurred only because of the rash and negligent driving of the first respondent's bus driver. Unfortunately, the Tribunal has not discussed the evidence of R.W.2, the driver of the bus, who has also spoken about the manner of accident and also the fact that the deceased was not wearing a seat belt which would have at least avoided fatality.



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9. We have independently perused the evidence of R.W.2. He has specifically stated that he came down from the bus and saw through the window of the Bolero Car and found that the deceased was not wearing his seat belt. That apart, he has also stated that if the deceased had exercised caution, he could have avoided the accident. Considering the over all evidence available on record and also the evidence of R.W.2 - driver of the bus involved in the accident, we deem it fit to deduct 10% towards contributory negligence on the part of the deceased.

10. Insofar as the awards under various heads, we find them be in line with the decisions of the Hon'ble Supreme Court in ***Pranay Sethi's*** case and ***Sarla Verma's*** case and the same does not warrant any interference. With regard to the argument of the learned counsel for the appellant that the parents of the deceased, viz., respondents 5 and 6 herein, residing separately and they were not dependents of the deceased as could be evidenced from their Aadhar cards, we are unable to countenance the said arguments that in order to be dependents on the son / daughter, it is not necessary that the parents should be living under one and the same roof and especially given the present societal set up, it is not un common



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nuclear families existing and at the same time, supporting their parents, who reside elsewhere. Therefore, just because the parents are living separately, it would not automatically mean that they are not dependents of the deceased. We do not find that it is a fit case warranting application of 1/3rd deduction towards personal expenses, instead of 1/4th, which has been rightly applied by the Tribunal.

11. We also find that the Tribunal has not awarded any amount towards loss of love and affection to the minor children as well as the parents of the deceased. With regard to deduction of income tax, we find that only after factoring future prospects, 10% has been deducted by the Tribunal and the same does not warrant any interference, especially, in the light of the appellant not adducing any material before the Tribunal with regard to actual deduction to be made for the particular income slab of the deceased.

12. The Tribunal awarded Rs.81,70,500/- as compensation. After deducting 10% (Rs.8,17,050/-) towards contributory negligence of the deceased, the claimants are entitled to Rs.73,53,450/- as compensation.



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13. In fine, the Civil Miscellaneous Appeal stands partly allowed and the compensation awarded by the Tribunal is reduced from Rs.81,70,500/- to Rs.73,53,450/-. The first claimant, who is the wife of the deceased is entitled to Rs.11,53,450/- with proportionate interest, the second claimant, who is the daughter of the deceased is entitled to Rs.28,00,000/- with proportionate interest, the third claimant, who is the son of the deceased is entitled to Rs.28,00,000/- with proportionate interest and the respondents 3 and 4 in M.C.O.P petition, who are the parents of the deceased are entitled to Rs.3,00,000/- each with proportionate interest.

14. The appellant / Insurance Company is directed to deposit the modified award amount of Rs.73,53,450/ along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, together with costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. Excess amount, deposited if any, shall be refunded to the appellant / Insurance Company.



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15. On such deposit being made, the respondents 1, 5 & 6 herein are permitted to withdraw their respective award amount along with interest and costs as apportioned by this Court, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. In respect of the share of minors - respondents 2 & 3, the Tribunal is directed to deposit their share amount in any one Nationalised Banks till they attained majority. Till then, the first respondent - mother of the minors shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the minors. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
09.11.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
Ls

To

1. The Motor Accident Claims Tribunal,
VI Additional District Court,
Madurai.



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2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

judgment in
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