



C.M.A.(MD)No.551/2019 & Cros.Obj(MD)No.1/2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 02.03.2023

Delivered On : 24.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.551 of 2019
and
Cross Objection (MD)No.1 of 2023

C.M.A.(MD)No.551 of 2019

The Oriental Insurance Company Ltd.,
TP HUB, 16-KJR Complex,
North Veli Street, Madurai-625001.

.. Appellant / 2nd Respondent

Vs.

Ramesh Babu (died)

1.Kokilavani

2.Prabhakaran

.. Respondents 1 & 2 /claimants

3.M.s.Panchami Enterprises,

Through its Prop. B.N.Srinivas,
SY.No.15/16, Kudaregere Village & Post,
Devanashali Taluk,
Bangalore Rural District-562 110.

.. 3rd Respondent /1st Respondent



C.M.A.(MD)No.551/2019 & Cros.Obj(MD)No.1/2023

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree and judgment in M.C.O.P.No. 183 of 2015 dated 09-11-2018 on the file of the Motor Accident Claims Tribunal – Special District Judge, MACT (incharge), Madurai.

For Appellant : Mr.E.Chandrasekaran
For Respondents : Mr.K.S.Duraipandian for R1 & R2
: No appearance for R3

Cross Objection (MD)No.1 of 2023

Ramesh Babu (died)

1.Kokilavani

2.Prabhakaran

.. cross objectors / claimants

Vs.

1.M.s.Panchami Enterprises,

Through its Prop. B.N.Srinivas,

SY.No.15/16, Kudaregere Village & Post,

Devanashali Taluk,

Bangalore Rural District-562 110.

2.The Oriental Insurance Company Ltd.,

TP HUB, 16-KJR Complex,

North Veli Street, Madurai-625001.

.. Respondents /Respondents

Prayer: This Cross objection is filed under Order 41 Rule 22 of the Civil Procedure Code, against the judgment and decree in M.C.O.P.No.183 of 2015 dated 09-11-2018 on the file of the Motor Accident Claims Tribunal – Special District Judge, MACT (incharge), Madurai.



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For Appellants

: Mr.K.S.Duraipandian

For Respondents

: Mr.E.Chandrasekaran for R2

COMMON JUDGMENT

This Appeal has been filed against the award, in M.C.O.P.No.183 of 2015 dated 09-11-2018 on the file of the Motor Accident Claims Tribunal – Special District Judge, MACT (incharge), Madurai. The appellant herein is the respondent, the respondents herein are the claimants in the original M.C.O.P. Petition. The Respondents filed cross objection in Cross Objection (MD) No.1 of 2023 for enhancement of compensation.

2. A Brief substance of the claim petition in M.C.O.P.No.183 of 2015 is as follows:

On 16.09.2014, at about 05.15 p.m, when the deceased - Lakshmi narayanan was riding a two wheeler, bearing Registration No.TN-59-AV-3111 along the Bangalore Rajanukunde main road, a tipper lorry bearing Registration No. KA - 43 - 5536 came from the opposite direction in a rash and negligent manner, dashed against the deceased and he died on the spot. The pillion rider-Giritharan, who sustained injury, was admitted in Bangalore R.V.R. Hospital. The deceased was an



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Engineer and he was doing computer repair work and was earning Rs.16,000/- per month. The petitioners are his dependants and they claim a sum of Rs.20,00,000/- as compensation.

3. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.183 of 2015, is as follows:-

It was the deceased, who drove the two wheeler in a rash and negligent manner and dashed against the tipper lorry. The deceased tried to cross the road, without giving any signal and he invited the accident. The age, income and profession of the deceased are to be proved.

4. Two (2) witnesses were examined, 17 documents were marked on the side of the petitioners. One witness was examined and one document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs.21,90,000/- as compensation and after deducting 25% (Rs.5,47,500/-) towards the own negligence of the deceased, awarded a sum of Rs.16,42,500/- as compensation to the claimants.

5. Against the award, the Insurance company has filed an appeal on the following grounds:-



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It was the deceased, who was responsible for the accident. The income of the deceased would be calculated as Rs.12,000/- per month, after adding 40% (Rs.4,800/-) towards future expenses, the income is to be calculated as Rs. 16,800/- pm. After deducting 50% towards own expenses, the deceased might to have contributed Rs.8,400/- to his family members. No document was filed to prove that the deceased was earning Rs.16,000/- per month. When the first respondent herself has admitted that the income is only Rs.16,000/-, the Tribunal is wrong in fixing the monthly income as 20,000/-, The Tribunal ought to have added only 40% towards future prospects.

6. The claimants have filed a cross objection, in Cro.Obj(MD)No.1 of 2023, for enhancement of compensation, on the following grounds:-

The deceased drove the two wheeler in a normal speed and in a cautious manner. It was the tipper lorry that came in a rash and negligent manner and hit against the two wheeler. The Criminal case was registered only against the driver of the tipper lorry. The Tribunal is wrong in fixing contributory negligence on the deceased. The deceased was 22 years and he was earning Rs.16,000/- per month. The deceased was an Engineering graduate. The Tribunal is wrong in deciding that the deceased was not having a valid driving licence. The Tribunal has failed to consider the evidence of P.W.2, wherein, it was stated that the deceased was wearing



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helmet. The Tribunal has failed to consider Ex.P3 - driving licence of the deceased and the evidence of pillion rider-Giritharan and that the fixation of 25% liability on the deceased is wrong.

7. Copy of the F.I.R was marked as Ex.P1. M.V.I. reports for the vehicles were marked as Ex.P11. R.C.book of the lorry was marked as Ex.P16. Driving licence of the deceased was marked as Ex.P3. Driving licence of the lorry driver was marked as Ex.P15.

8. P.W.1 and P.W.2 have deposed that it was the lorry, which came in a rash and negligent manner and dashed against the deceased. In Ex.P1, the driver of the tipper lorry was mentioned as the accused. No eye witness was examined on the side of the Insurance Company. On the basis of the oral evidence of P.W.1 and P.W.2 and on the basis of Ex.P1, it is decided that the driver of the tipper lorry is responsible for the accident.

9. On the side of the appellant-Insurance Company, it is stated that the deceased was responsible for the accident. On the side of the claimants, it is stated that the deceased was not responsible for the accident and the entire negligence was on the part of the lorry driver. The Tribunal has made a wrong observation that M.V.



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I report for the two wheeler and the driving licence of the deceased was not marked, whereas, the driving licence of the deceased was marked as Ex.P3 and M.V.I. report was marked as Ex.P11.

10.The Tribunal gave a finding that the deceased was not wearing helmet at the time of accident and there are head injuries. Considering the head injuries, it is decided that the deceased was not wearing helmet at the time of accident, and the contributory negligence is fixed as 10%.

11. On the side of the appellant – Insurance Company, it is stated that the deceased was an Engineering Graduate and he was earn Rs.16,000/- per month. Without any evidence and without any document, the Tribunal fixed the monthly income as Rs.20,000/-, which is excessive.

12.Considering the date of accident, the notional income prevailing at the time of accident and considering the fact that the deceased was an Engineer at the time of accident and the oral evidence on the side of the claimants, it is decided that the deceased might have earned Rs.15,000/- per month. The deceased was a bachelor, hence, 50% to be deducted for his own expenses, After deducting 50% (Rs.7,500/-), the deceased might have contributed Rs.7,500/- per month to his family



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members. After adding 40% (Rs.3,000/-) towards future prospects, the monthly income is calculated as Rs.10,500/- (Rs.7,500/- + Rs.3000/-). The age of the deceased at the time of accident was 22 years. Considering the age of the deceased, multiplier '18' is applicable. After applying multiplier '18', the loss of income is calculated as Rs.22,68,000/- (Rs.10,500/- X 12 X18).

13. The Tribunal has awarded Rs.15,000/- towards funeral expenses, Rs.15,000/- towards transport expenses, which are all reasonable.

14. The Total compensation is calculated as follows:-

Loss of income	:	Rs.22,68,000/-
Funeral expenses	:	Rs. 15,000/-
Transport expenses	:	Rs. 15,000/-
Total compensation	:	 Rs.22,98,000/-

15. After deducting 10% (Rs.2,29,800/-) for the own negligence of the deceased, the claimants are entitled to Rs.20,68,200/- as compensation.



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16. The mother of the deceased is entitled to Rs.15,00,000/- with proportionate interest and costs. The brother of the deceased is entitled to Rs.5,68,200/- with proportionate interest.

17. The Appeal is dismissed and the Cross objection is partly allowed.

(i) The appellant - Insurance Company, is directed to deposit the entire compensation of **Rs.20,68,200/** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made, the claimants are permitted to withdraw their respective shares as per the ratio fixed by this Court with proportionate interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any. No costs.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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24.03.2023



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R. THARANI, J.

Ls

To

1.The Motor Accident Claims Tribunal –
Special District Judge, MACT (incharge),
Madurai.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.551 of 2019
and
Cross Objection (MD)No.1 of 2023

24.03.2023