



C.M.A.(MD)No.150 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 01.03.2023

Delivered On : 19.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

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1.Elango (died)

2.Progis

3.Mishma

4.Rias

5.Rashith

6.Minor Minika

.. Appellants

(The 6th respondent represented by
by her mother, the petitioner viz, Progis)

Vs.

1.Rosari Suresh

2.The Managing Director,

Royal Sundaram Alliance Insurance Company Limited,

No.46, Whites Road,

Chennai - 6000014.

.. Respondents

(Cause title accepted vide Court order dated 28.08.2019,
made in C.M.P.(MD)No.7660 of 2019 in
C.M.A.(MD)No.SR58783 of 2019)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order dated 03.01.2011 passed in M.C.O.P.No. 690 of 2008 on the file of Motor Accidents Claims Tribunal, Additional District Fast



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Track Court No.II, Tirunelveli.

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For Appellants

: Mr.M.P.Senthil

For 2nd Respondent

: Mr.S.Srinivasa Raghavan

For 1st Respondent

: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.690 of 2008 dated 03.01.2011, on the file of the Motor Accidents Claims Tribunal, Additional District Fast Track Court No.II, Tirunelveli.

2.The appellants 1 and 2 herein are the petitioners 1 and 2, the appellants 3 to 6 herein are the legal heirs of the first appellant and the respondents herein are the respondents in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.690 of 2008, claiming compensation for the death of one Jaineesh, in an accident that took place on 30.04.2008. The Tribunal has awarded a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.690 of 2008 is as follows:

On 30.04.2008, when the deceased was travelling in a van, the driver of the van drove the vehicle in a rash and negligent manner. Due to the impact, the



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deceased fell down from the vehicle and he sustained grievous injuries and died on the spot. The accident occurred only due to the rash and negligence driving of the van driver. The deceased was aged about 12 years and he was studying 11th standard. During holidays, the deceased used to work of loadman to help his family. The petitioners claim a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) as compensation.

4.Brief substance of the counter filed by the first respondent therein is as follows:

The vehicle belonged to the first respondent. The deceased travelled in the vehicle only to unload the bricks. The accident was not due to the rash and negligent driving of the lorry driver. The driver was having valid driving licence. The vehicle was insured with the second respondent. The second respondent is liable to pay compensation.

5.Brief substance of the counter filed by the second respondent therein is as follows:

The petitioners have to prove that the vehicle was insured with the second respondent. The first respondent driver was having valid driving licence. The petitioners have to prove the age and education particulars of the deceased. The



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manner of the accident is denied. The vehicle was a load vehicle. Passengers are not permitted to travel in the goods carrier. The deceased travelled only as a gracious passenger and the second respondent is not liable to pay compensation. The deceased was a child labour and that the petition is to be dismissed.

6. Brief substance of the additional counter filed by the second respondent therein is as follows:

The vehicle was driven by one Soris Rabesh, who was aged about 16 years. Chargesheet was filed against him. The petitioners suppressed all these facts. The petitioners conspired with the first respondent and they filed this petition, as if the first respondent Rosari Suresh was the driver at the time of the accident.

7. In the same accident, another person Starluck sustained injuries and he filed a claim petition in M.C.O.P.No.678 of 2008. Since both the claims arose out of the same accident, a joint trial was conducted and a common order was passed by the Tribunal. In the joint trial, on the side of the petitioners, four witnesses were examined and five documents were marked. On the side of the respondents therein, three witnesses were examined and six documents were marked. After trial, the Tribunal has awarded a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation to be paid by the first respondent. Against which, the appellants have



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preferred this Civil Miscellaneous Appeal for enhancement of compensation on the following grounds:-

Though the claim is for Rs.7,00,000/- (Rupees Seven Lakhs only), the Tribunal has awarded only Rs.2,00,000/- (Rupees Two Lakhs only), which is very low. The Tribunal failed to consider that multiplier method should be adopted in calculating award amount. The Tribunal has failed to note that Rs.5,000/- (Rupees Five Thousand only) is to be fixed as notional income in case of children. The insurance policy was effective at the time of accident. The Tribunal is wrong in exonerating the second respondent. The Tribunal failed to appreciate Section 166 of Motor vehicles Act in the proper perspective.

8.On the side of the second respondent, it is stated that the deceased travelled only as a gracious passenger. The deceased was not a loadman and the deceased was a minor and he was studying 11th standard. The Tribunal has decided that the compensation is to be paid by the owner not by the insurance company.

9.The copy of the FIR was marked as Ex.P1. The copy of the observation mahazer was marked as Ex.P3. The copy of the rough sketch was marked as Ex.P4. The copy of the chargesheet was marked as Ex.R4. The copy of the MV report was marked as Ex.R5. The copy of the policy was marked as Ex.R6. P.W.1 and P.W.2



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have deposed that the accident has happened due to the rash and negligent driving of the van driver. P.W.3 has deposed that the deceased and the injured person were travelling on the top of the load and he has further deposed that since the deceased and the injured failed to hold the bar in the proper manner, they fell down and sustained injuries.

10.P.W.4 has deposed that the vehicle was driven by the owner Suresh in a high speed and he sustained injuries in the accident. R.W.2 has deposed that it was the son of the owner, who drove the vehicle. On the side of the second respondent, it is stated that the first respondent was not the driver of the van. One Soris Rabesh was the driver at the time of accident. R.W.1 has deposed that it was he who drove the vehicle at the time of the accident and not the minor boy. R.W.3 has deposed that the deceased travelled as a gracious passenger.

11.It was the son of the first respondent, who drove the vehicle and the chargesheet was filed against him. Ex.R6 is the insurance policy. Considering the evidence of P.W.1 and P.W.2, considering Ex.P1, Ex.P4, chargesheet, it is decided that the van was driven by its driver in a rash and negligent manner.



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12.On the side of the appellants, it is stated that the quantum fixed by the Tribunal is very low. The Tribunal has failed to fix the notional income and failed to add future prospects in calculating the compensation. On the side of the respondents, it is stated that the deceased was only a student aged about 11 to 13 years and that he could not be a loadman.

13.R.W.2 has deposed that the deceased and injured travelled on top of the brick load. The Tribunal considered that there is no possibilities for the deceased to work as a loadman. In the claim petition in column for 'profession', it was mentioned as the deceased was only a student. The Tribunal has decided that the policy was not in force at the time of accident and that the driver was not having valid driving licence and that the deceased and other passenger travelled as gracious passengers, exonerated the second respondent and fixing the liability on the first respondent is reasonable.

14.It is seen that the insurance policy was in force at the time of accident. But considering the fact that the deceased travelled only as a gracious passenger, it is stated that the insurance company has to be exonerated from the charges.



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15. On the side of the appellants, it is stated that the Tribunal ought to have adopted multiplier method in calculating the compensation.

16. On the side of the respondents, it is stated that in the case of school going child, the notional income is to be fixed as Rs.15,000/- (Rupees Fifteen Thousand only) per annum.

17. The learned counsel for the appellants would rely upon a judgment of the Hon'ble Supreme Court in the case of **Kajal v. Jagdish Chand and Others** reported in **(2020) 4 Supreme Court Cases 413**, wherein it is follows:

'Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs.15,000/- per annum can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs.15,000/- per annum. Each case has to be decided on its own evidence but taking notional income to be Rs.15,000/- per annum is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs.4,846/- per month. In our opinion this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs.6,784.40/- per month, i.e., 81,412.80 per annum. Applying the multiplier of 18, it works out to Rs.14,65,430.40, which is rounded off to Rs. 14,66,000/-.'



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18. Considering the judgment cited above, it is decided that the appellants are entitled to a sum of Rs.2,70,000/- (Rupees Two Lakhs and Seventy Thousand only) towards loss of income. Considering the date of accident, it is decided that the appellants are entitled to a sum of Rs.5,000/- towards funeral expenses, Rs.3,000/- towards transportation expenses, Rs.10,000/- towards loss of love and affection, Rs.2,000/- towards damage to articles, Rs.5,000/- towards loss of estate, Rs.5,000/- towards loss of amenities. In total, a sum of Rs.3,00,000/- (Rupees Three Lakhs only) is awarded as compensation.

19. The second appellant alone is the Class I heir of the deceased. The appellants 3 to 6 are legal heirs of the first appellant, who was the father of the deceased. The appellants 3 to 5 cannot be considered as the dependents of the deceased and hence, the appellants 3 to 5 are not entitled to claim compensation. In the result, this Civil Miscellaneous Appeal is **partly allowed**. The compensation is enhanced from Rs.2,00,000/- to Rs.3,00,000/-.

20. The second appellant is entitled to a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation with interest at the rate of 7.5% and costs from the date of the claim petition till the date of deposit. The first respondent herein is directed to deposit Rs.3,00,000/- (Rupees Three Lakhs only) with 7.5% interest from



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date of the claim petition till the date of deposit and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the second appellant is permitted to withdraw the award amount, after deducting any amount received by her earlier. The second appellant is not entitled for interest for the default period, if there is any. The appellants are directed to pay additional Court fee for the enhanced amount. No Costs.

19.04.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accidents Claims Tribunal,
Additional District Fast Track Court No.II,
Tirunelveli.

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

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