



C.M.A.(MD)No.771 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 03.03.2023

Delivered On : 05.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.771 of 2014

Royal Sundaram Alliance Insurance Co. Ltd.,
A.T.P.Towers, 5th Floor,
No.12-A, Bye Pass Road,
Madurai – 10.

.. Appellant

Vs.

1.Mariappan (Died)
2.Chinnathai
3.Ganesa Pandi
4.Kaliswai
5.Kasthuri
6.Muniswaran
7.Perumal Samy
8.L.Kannan
9.The New India Assurance Company Ltd.,
Through its divisional Manager,
No.41-B, Victoria Street,
Tuticorin-1.

.. Respondents

(Memo dated 27.01.2023 in USR No.3423 is recorded as
1st respondent died and the respondents 2 to 6, who are already
on record are recorded as lrs of the deceased R1 vide
Court order dated 08.02.2023 made in
C.M.A.(MD)No.771 of 2014 by RTJ)
(Minor 6th respondent is declared as major



C.M.A.(MD)No.771 of 2014

vide Court order dated 28.02.2023 made
in C.M.P.(MD)No.2494 of 2023 in
C.M.A.(MD)No.771 of 2014 by RTJ)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 17.09.2013 and made in M.C.O.P.No.389 of 2012 Motor Accident Claims Tribunal, (Additional District Judge), Thoothukudi.

For Appellants	: Mr.S.Srinivasa Raghavan
Respondent No.1	: Died
For Respondents 2 to 6	: Mr.S.Senthil Sankara Natha Kumar
For 9 th Respondent	: Mr.D.Malaichamy
For Respondents 7 and 8	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.389 of 2012 dated 17.09.2013, on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Thoothukudi.

2.The appellant herein is the second respondent, the respondents 1 to 6 herein are the petitioners and the respondents 7 to 9 herein are the respondents 1, 3 and 4 in the claim petition. The respondents 1 to 7 herein have filed a claim petition in M.C.O.P.No.389 of 2012, claiming compensation for the death of one Karthiswaran, in an accident that took place on 08.08.2012. The Tribunal has awarded a sum of Rs.11,81,450/- (Rupees Eleven Lakhs Eighty One Thousand Four



C.M.A.(MD)No.771 of 2014

Hundred and Fifty only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.389 of 2012 is as follows:

On 08.08.2012, at about 02.30 p.m., when the deceased was travelling as a pillion rider in a two wheeler bearing registration No.TN-67-AS-8785 along the Thoothukudi Madurai Bye pass road, a lorry bearing registration No.TN-F-7454 came in a rash and negligent manner hit against the two wheeler. Both the rider and the pillion rider sustained injuries and they were taken to the Government hospital. After getting first aid, they were transferred to AVM hospital, Thoothukudi and the next day, the deceased died. The deceased was aged about 22 years and he was a bachelor and he was working as a Printing Press Operator and he was earning Rs. 15,000/- (Rupees Fifteen Thousand only) per month. The petitioners are his dependants and they claim a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation.

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

The accident took place only due to the rash and negligent driving of the

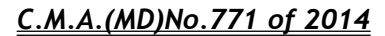


C.M.A.(MD)No.771 of 2014

WEB COPY
rider of the two wheeler by name Raja Baskar. Only after giving light signal, the lorry was turned to the right. It was the two wheeler, which came in a rash and negligent manner dashed against the right side body of the lorry, resulting in the accident. Only the respondents 3 and 4 are liable to pay compensation. The age, occupation and income of the deceased are all denied. The brothers and sister of the deceased are not dependants. Only the age of the mother is to be taken into consideration for applying multiplier. 50% of the income to be deducted for the own expenses of the bachelor. The petitioners are to prove that the vehicle was insured with the sixth respondent and that the driver of the lorry was having valid driving licence and that the lorry was having RC and FC. The claim is excessive.

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

The age, occupation and income of the deceased are to be proved. The petitioners have to prove that they were the legal heirs of the deceased. The accident had happened only due to the rash and negligent driving of the first respondent. The FIR was registered against the first respondent lorry driver. The respondents 3 and 4 are unnecessary parties to the case. The rider of the two wheeler was not responsible for the accident. The claim is excessive.



7. Against which, the appellant has preferred this Civil Miscellaneous in the following grounds:-

The order of the Tribunal is against the oral and documentary evidence adduced by both the parties. The Tribunal is wrong in adding 50% towards future prospects when there was no proof for fixing the income of the deceased. The Tribunal failed to consider that in case of bachelor, when the father of the deceased was alive, the adult sisters and brothers of the deceased cannot be deemed to be depends of the deceased. The Tribunal ought to deduct half of the monthly income towards the personal expenses and not 1/4th of the income. The Tribunal failed to consider that multiplier should be based on the age of the mother and not on the age of the deceased. Awarding Rs.87,900/- (Rupees Eighty Seven Thousand and Nine Hundred only) towards conventional charges is untenable.

8.A copy of the FIR was marked as Ex.P1, copy of alteration report was



C.M.A.(MD)No.771 of 2014

marked as Ex.P2, copy of insurance policy of the lorry was marked as Ex.P3, copy of RC of the lorry was marked as Ex.P4, MV report of the lorry and the motorcycle were marked as Ex.P6 and Ex.P8. The driving licence of the driver of the lorry was marked as Ex.P7, the copy of driving licence of P.W.2 was marked as Ex.P9. The copy of the insurance policy was marked as Ex.P10. P.W.2 has deposed that the accident had happened only due to rash and negligent driving of the first respondent lorry driver. FIR was registered against the lorry driver. On the basis of evidence of P.W.1 and P.W.2, Ex.P1, Ex.P2, Ex.P6, Ex.P8, it is decided that the accident had happened due to rash and negligent driving of the first respondent lorry driver.

9.From Ex.P7 and Ex.P9, it is clear that both the drivers of the two wheeler and the lorry were having driving licence and that the lorry was insured with the second respondent and that there is no violation of policy conditions. Hence, it is decided that the appellant is liable to pay compensation to the claimants.

10.On the side of the respondents 2 to 6, it is stated that the deceased was working as the Printing Press Operator and was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month. Ex.P14 is the salary certificate. The salary register, attendance register and the labour register were produced on the side of the respondents 2 to 6. The Tribunal has fixed the notional income only as Rs.4,500/-



C.M.A.(MD)No.771 of 2014

(Rupees Four Thousand and Five Hundred only) and that the income of the deceased was Rs.15,000/- (Rupees Fifteen Thousand only) and hence, the income is to be enhanced.

11.In support of this contention, a judgment of the Hon'ble Supreme Court in the case of *V.Mekala v. M.Malathi and another* reported in *2014(2) TNMAC 6 (SC)* is cited. The learned counsel for the respondents 2 to 6 would rely upon another judgment of the Hon'ble Supreme Court in the case of *Syed Sadiq, etc v. Divisional Manager* reported in *2014 (1) TNMAC 459 (SC)*.

12.On the side of the appellant, it is stated that the deceased was working as a printing Press Operator and hence, the Tribunal is wrong in adding 50% towards future prospects. No records was filed on the side of the respondents 2 to 6 to prove that the deceased was working as a Printing Press Operator and that the nature of work is permanent. Hence, it is decided that only 40% of the income is to be added towards future prospects.

13.Considering the date of accident, the notional income is fixed as Rs. 6,000/- (Rupees Six Thousand only). After deducting 1/2th of his income, the deceased might have contributed Rs.3,000/- (Rupees Three Thousand only) to his



C.M.A.(MD)No.771 of 2014

family. The age of the deceased was 22 years. After adding 40% future prospects, the monthly income is calculated as Rs.4,200/- (Rupees Four Thousand and Two Hundred only). For the age of 22 years, multiplier '18' is to be adopted. After applying multiplier '18', the loss of income would be calculated as Rs.9,07,200/- (Rupees Nine Lakhs Seven Thousand and Two Hundred only).

14.It is seen that the Tribunal has awarded Rs.10,000/- (Rupees Ten Thousand only) for each of the claimants towards loss of love affection, Rs.10,000/- (Rupees Ten Thousand only) towards loss of estate, Rs.5,000/- (Rupees Five Thousand only) towards funeral expenses.

15.As per the dictum of the Hon'ble Supreme Court in **Praney Sethi** case, it is decided that the claimants are entitled to Rs.70,000/- (Rupees Seventy Thousand only) towards conventional charges. The Tribunal has awarded a sum of Rs.12,950/- (Rupees Twelve Thousand Nine Hundred and Fifty only) towards medical expenses, which is reasonable. In total, a sum of Rs.9,90,150/- (Rupees Nine Lakhs Ninty Thousand One Hundred and Fifty only) is awarded as compensation.

16.The second respondent alone is the Class I heir of the deceased. The first claimant was dead. The respondents 3 to 6 are the major brothers and sisters of



C.M.A.(MD)No.771 of 2014

the deceased. The respondents 3 to 6 cannot be taken as the dependents of the deceased and hence, the respondents 3 to 6 are not entitled to claim compensation. In the result, this Civil Miscellenaous Appeal is **partly allowed**. The compensation is reduced from Rs.11,81,450/- to Rs.9,90,150/-.

17.The second respondent/mother is entitled to a sum of Rs.9,90,150/- (Rupees Nine Lakhs Ninty Thousand One Hundred and Fifty only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit and costs. The appellant is directed to deposit Rs.9,90,150/- (Rupees Nine Lakhs Ninty Thousand One Hundred and Fifty only) with 7.5% interest from date of the claim petition till the date of deposit and with costs 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 respondent is permitted to withdraw the award amount, after deducting any amount received by her earlier. The claimant/2nd respondent is not entitled for interest for the default period, if there is any. Excess amount if any shall be refunded to the appellant. No Costs.

05.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
MRN



WEB COPY



C.M.A.(MD)No.771 of 2014

R. THARANI, J.

MRN

To

- 1.The Motor Accidents Claims Tribunal, Additional District Judge,
Thoothukudi.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD)No.771 of 2014

05.04.2023