



C.M.A.(MD)No.247 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 01.03.2023

Delivered On : 28.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.247 of 2018

The Branch Manager

M/s. United India Insurance Company Limited,

Sankarankovil.

... Appellant / 2nd respondent

Vs.

1.Shenbagam

2.Vellaiyammal

... Respondents 1&2 /Petitioners

3.Kanagaraj

4.Sivasakthi

5.The Divisional Manager,

ICICI Lombard General Insurance Co.Ltd.,

Mumbai.

... Respondents 3 to 5 /Respondents 1, 3 & 4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.A.C.T.O.P.No.48 of 2017, dated 25.10.2017, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Tenkasi.



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For Appellant

: Mr.C.Jawahar Ravindran

For Respondents

: Mr.S.A.Ganapathiraman for R1 & R2

: No appearance for R3 & R4

: Mr.V.Muthukamatchi for R5

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in in M.A.C.T.O.P.No.48 of 2017, dated 25.10.2017, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Tenkasi. The appellant herein is the second respondent, the respondents 1 & 2 herein are the claimants and the respondents 3 to 5 herein are the respondents 1, 3 & 4 in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.A.C.T.O.P.No.48 of 2017 is as follows:-

On 01.06.2013, when the deceased-Kumaresan was riding a motorcycle bearing Registration No.TN-76-J-1149 along the Senkottai to Kutralam road, alongwith a pillion rider-Sivasakithi near Vivekananda Saw mill, keeping the left side of the road in a slow and cautious manner, a Van, bearing Registration No.TN-72-N-4453 was proceeding in front of the Motorcycle in a rash and negligent manner and the driver suddenly applied the brake and stopped the vehicle, due to



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which, the motorcycle hit the rear side of the van, the deceased - Kamaresan sustained injuries and he died on his way to the hospital. It was the van driver, who stopped the van in the middle of the road, was responsible for the accident. But, to the contrary, the Sengottai Police, registered a false case against the deceased, by taking advantage of the unconscious stage of the pillion rider - Sivasakthi. The petitioners are the dependants of the deceased and they claimed a sum of Rs.30,00,000/- as compensation.

3. A brief substance of the counter filed by the first respondent, in M.C.O.P.No.48 of 2017 is as follows:-

The manner of accident is denied. The accident has happened due to the rash and negligent driving of the deceased. The deceased did not possess valid driving licence. Hence, the second respondent is not liable to pay compensation. The age, occupation and income of the deceased are all denied. The claim is excessive.

4. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.48 of 2017 is as follows:-

The manner of accident is denied. The deceased was riding the two wheeler by following all the traffic rules and he was not responsible for the accident.



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The van driver suddenly and negligently stopped the vehicle in the middle of the road, without parking lights, which resulted in the accident. The first respondent being a tort feaser, the respondents 3 and 4 are not liable to pay compensation. The owner and insurer of the van are liable to pay compensation. The petitioners have to prove the age, occupation and income of the deceased. The claim is excessive.

5. Two witnesses were examined and 11 documents were was marked on the side of the petitioners. Two witnesses were examined and One document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs.20,79,000/- as compensation, to be paid by the second respondent – insurance company with interest at the rate of 9% p.a..

6. Against the award, the appellant - Insurance Company has filed this Appeal on the following grounds:-

The Tribunal is wrong in fixing the monthly income as Rs.12,000/- and by adding 50% towards future prospects. The claimants have failed to prove the avocation and income of the deceased through documentary evidence. The age of the deceased fixed by the Tribunal is wrong. The Tribunal has failed to note that the deceased was a Bachelor. The Tribunal ought to have taken the age of the mother for calculating the loss of income. The Tribunal has awarded Rs.1,00,000/-towards



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loss of love and affection, which is excessive. The Tribunal has fixed the interest at the rate of 9% pa., which is excessive.

7. On the side of the appellant, it is stated that the van was parked on the extreme left side of the road. It was the two wheeler, which hit the rear side of the van. R.W.2 was the police official, he gave evidence as to the complaint lodged by the pillion rider. Ex.P3 was the M.V.I report. There was no indicator in the van. Applying multiplier method for assessing the loss of income is wrong. The Tribunal has admitted that the two wheeler hit from the back side of the van, but, even then, the Tribunal has wrongly fixed the responsibility on the van driver, at least 50% contributory negligence is to be fixed on the two wheeler.

8. On the side of the respondents, it is stated that it was the van that was stopped without any signal, in the middle of the road that was the reason that the two wheeler hit the rear side of the van. The complaint was given by the van driver. On the side of the appellant, it is stated that the two vehicles involved in the occurrence and the liability is to be fixed 50% : 50%.

9. It is seen that the van was parked, without any parking lights. It is seen that the two wheeler hit the rear side of the van. In the above circumstances, it is



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decided that the rider of the two wheeler was also responsible for the accident. The rider of the two wheeler was 30% responsible for the accident and the driver of the van was 70% responsible for the accident.

10. On the side of the appellant, it is stated that the monthly income fixed by the Tribunal is excessive. The Tribunal has fixed the monthly income as Rs.12,000/-. On the side of the claimants, it is stated that the deceased was aged about 22 years and he was earning Rs.15,000/- as electrician and that the deceased was holding National Trade Certificate, which was marked as Ex.P5. Attendance certificate was marked as Ex.P6.

11. Considering the fact that the deceased was technically qualified person, the monthly income (Rs.12,000/- pm) fixed by the Tribunal is reasonable. The deceased was a bachelor and after deducting 50% (Rs.6,000/-) towards his own expenses, the deceased might have contributed Rs.6,000/- to his family members. Since the deceased was working in a private institution, the claimants are entitled to 40% towards future prospects. After adding 40% towards future prospects and after applying multiplier 18 the loss of income is calculated as Rs.18,14,400/- (Rs.8,400/- X 12 X 18).



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12. The Tribunal has awarded Rs.10,000/- towards loss of estate, Rs. 50,000/- towards loss of love and affection to each claimant, Rs.25,000/- towards transport expenses and funeral expenses. As per the dictum of the Hon'ble Supreme Court in *Pranay Sethi's case*, the claimants are entitled to Rs.70,000/- as conventional charges.

13. The total compensation is calculated as follows:-

Loss of income	:	Rs.18,14,400/-
Conventional charges	:	Rs. 70,000/-
		
Total compensation	:	Rs.18,84,400/-
		

14. After deducting 30% ie. Rs.5,65,320/- towards contributory negligence of the deceased, the claimants are entitled to 70% of the compensation, ie. **Rs.13,19,080/-**. The Tribunal has fixed the interest as 9% p.a., which is excessive. The interest is reduced to 7.5% p.a.

15. The father of the deceased is entitled to Rs.6,00,000/- with proportionate interest and the mother of the deceased is entitled to Rs.7,19,080/- with proportionate interest and costs.



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WEB COPY 16. This Appeal is partly allowed. The compensation is reduced from Rs.20,79,000/- to Rs.13,19,080/-.

(i) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.13,19,080/- (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 by the Insurance Company, the respondents 1 and 2 herein / claimants are permitted to withdraw their share as apportioned by this Court along 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.

28.03.2023

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

1.The Motor Accidents Claims Tribunal
Additional District Judge,
Tenkasi.

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



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R. THARANI, J.

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Pre-delivery Judgment made in
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