



C.M.A.(MD)No.385 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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Meganathan

...Appellant/1st Respondent

Vs.

1.Chandra

2.Divya

...Respondents 1 & 2/Petitioners 1 & 2

3.Palaniyappan

4.Sowmiya

...Respondents 3 & 4/Respondents 2 & 3

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 07.01.2021 in M.C.O.P.No.136 of 2016 on the file of the Motor Accident Claims Tribunal, Principal District Court, Pudukkottai.

For Appellant : Mr.P.Ganapathi Subramanian

For RR1, 2 & 4 : Mr.C.Ganesh Kumar

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the award passed by the Motor Accident Claims Tribunal /Principal District Court, Pudukkottai in M.C.O.P.No.136 of 2016 dated 07.01.2021.



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2.For the sake of convenience, the parties herein are referred to as per their rank before the Tribunal.

3.The brief facts, leading to the filing of the claim petition, are as follows:-

(i)the deceased Soundarrajan, on 16.08.2015 while riding his TVS Sport two wheeler keeping left side of the road in a careful manner, near Mavadikottai bus stop, the two wheeler bearing registration No.TN-63-T-7045 belonging to the first and second respondents came in an opposite direction in a rash and negligent manner and dashed against the deceased and as a result, the deceased succumbed to injuries on the spot.

(ii)The first petitioner is the wife of the deceased, the second petitioner and the third respondent are the daughters of the deceased. The deceased was aged about 42 years at the time accident and he was earning a sum of Rs.20,000/- per month by working at abroad and also by doing agricultural work. Hence, the claim petition was filed.



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(ii)The first respondent before the Tribunal contended that there was no negligence on the part of the first respondent. Further, the income, age and occupation were also disputed.

4. Before the tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P5 were marked. On the side of the respondents R.W.1 was examined and Ex.R1 was marked.

5.The Tribunal considering the evidence of P.W.2, found that only the first respondent was rash and negligent in driving the vehicle. The tribunal also took note of the fact that the case was registered against the first respondent and considering the age of the deceased, the Tribunal fixed the notional income of the deceased at Rs.8,000/- and awarded the compensation as follows:

S.No.	Head of Compensation	Award amount
1.	Loss of income	Rs.11,20,000/-
2.	Loss of estate	Rs. 15,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Loss of Consortium	Rs. 40,000/-
5.	Filial consortium	Rs. 40,000/-
	Total	Rs.12,30,000/-



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Since the vehicle was not insured, the Tribunal directed the first and second respondents to pay the compensation. Challenging the same, the present Civil Miscellaneous Appeal is filed by the first respondent.

7.The main contention of the learned counsel for the appellant is that there was no evidence available on record to prove the negligence on the part of the first respondent. Merely on the basis of FIR that was registered against the first respondent, the negligence had been fixed on the first respondent, which is not in accordance with law.

8.In view of the above submission, now the point arises for consideration in this appeal is:

Whether the Tribunal was right in fixing the negligence on the part of the first respondent?

9.Admittedly the offending vehicle was not insured. The eye witness, P.W.2, who accompanied the deceased in another motorcycle, had clearly spoken about the rash and negligent driving of the first respondent. That apart, the Police also proceeded the investigation against the first respondent and also registered a



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case against the first respondent. Considering the preponderance of probabilities and the manner in which the accident had taken place, the Tribunal had rightly held that the first respondent was rash and negligent in driving the motorcycle in an opposite direction.

10. Admittedly, there is not proof to show that the deceased was earning a sum of Rs.20,000/- per month. Therefore, considering the fact that the deceased was having a valid passport and worked in abroad for sometime, the Tribunal fixed the notional income of Rs.8,000/-. Considering the age of the deceased 25% future prospects was added and multiplier 14 was adopted by the Tribunal as per the dictum laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., vs. Pranay Sethi and others*** [CDJ 2017 SCC 1220] and the compensation of Rs.12,30,000/- was awarded. Since the offending vehicle was not insured, the first and second respondents were directed to pay the compensation.

11. For the reasons stated above, this Court is of the view that the award passed by the Tribunal is well reasonable and the same does not warrant any interference. Accordingly, this Civil Miscellaneous Appeal is dismissed.



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12.The appellant is directed to deposit the compensation amount as awarded by the Tribunal with interests and costs to the credit of M.C.O.P.No.136 of 2016, on the file of the Motor Accident Claims Tribunal /Principal District Court, Pudukkottai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants are permitted to withdraw the same as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs.

17.04.2023

NCC : Yes / No

Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accident Claims Tribunal,
Principal District Court, Pudukkottai.

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



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N.SATHISH KUMAR, J.

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