



C.M.A.(MD).No.1005 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2023

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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and

C.M.P.(MD).No.9957 of 2022

United India Insurance Company Limited
through its Branch Manager,
Office at Door No.924/A CCC Complex,
Main Road Kovilpatti Town,
Tuticorin District.

... Appellant

Vs.

1.Mani Kandan
2.Sankar
3.Muthumari
4.Maruthaiya
5.Seetharaman
6.Krishnakumar

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.07.2019 passed in M.C.O.P.No.62 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankarankovil.

For Appellant	: Mr.A.Shajahan
For R1 to R4	: Mr.K.Sankar
For R6	: No appearance



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J U D G M E N T

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Challenging the award passed by the Motor Accident Claims Tribunal, Sub Court, Sankarankovil in M.C.O.P.No.62 of 2013, dated 16.07.2019, the Civil Miscellaneous Appeal has been filed by the Insurance Company on the main ground of contributory negligence on the part of the rider of the motorcycle.

2. Though the ground has been raised as against the quantum also, the learned counsel appearing for the appellant fairly submitted that he has not challenged the quantum and he has restricted his submission only to contributory negligence.

3. The brief facts leading to the filing of this appeal is as follows:

The deceased Nagaraj was earning a sum of Rs.15,000/- by way of brick manufacturing. On 22.03.2010 at about 1.30 p.m., while he was riding his motorcycle bearing Registration No.TN 76 Y 7857 near Kovilpatti Railway over bridge, the second respondent, who is the driver of the first respondent, drove the Maruthi Van bearing Registration No.TN 67 W 6781 in a rash and negligent manner and dashed against the motorcycle. As a result, an accident was occurred and the said Nagaraj sustained injuries and thereafter, he was



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admitted in the hospital. Subsequently, he was succumbed to injuries.

Accordingly, a case in Crime No.241/2010 has been registered against the deceased for the offences under Sections 304(A), 279 and 337 of I.P.C. The third respondent/Insurer has filed a counter to the effect that the accident has occurred only due to the rash and negligent driving of the deceased.

4. Before the Tribunal, on the side of the claimants, P.Ws.1 and 2 were examined and Exs.P1 to P9 were marked and on the side of the respondents, R.W.1 was examined and Exs.X1 and X2 were marked.

5. The Tribunal, on appreciation of evidence, come to the conclusion that the accident has occurred only due to the rash and negligent driving of the second respondent and fixed the notional income of the deceased as Rs.6,000/- and awarded a sum of Rs.9,07,500/- as compensation in the following manner:

S. No	Description	Amount awarded by the Tribunal
1.	Loss of dependency	Rs.8,77,500/-
2.	Funeral expenses	Rs.15,000/-
3.	Loss of estate	Rs.15,000/-
	Total	Rs.9,07,500/-

Challenging the same, the present appeal has been filed.



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6. The main contention of the learned counsel appearing for the appellant/Insurance Company is that the F.I.R. itself is filed against the deceased. However, the Tribunal has not considered the same and fixed the negligence only on the part of the driver of the Maruthi Omni Van, which is not proper.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent.

8. The Tribunal has fixed the notional income of the deceased as Rs. 6,000/- per month, this Court is of the view that the same is very reasonable and that is why the same has not been challenged before this Court. Now, it has to be seen that whether the deceased is negligent at the time of accident. The only ground on which the submission is made that the F.I.R. has been registered against the deceased. This Court is of the view that the contention of the learned counsel for the appellant cannot be countenanced for the reason that the deceased suffered serious injuries and lifted to the hospital immediately and succumbed to injuries. At the relevant point of time, the driver of the offending vehicle given an information to the police, in order to avoid liability as well as the criminal action.



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9. In such a view of the matter, for mere filing of an F.I.R., against the deceased, this Court cannot come to the conclusion that there is a contributory negligence on the part of the deceased. The Tribunal has considered the evidence produced before it and after appreciation of evidence, held that only due to the rash and negligent driving on the part of the driver of the Omni Van, the accident has occurred. The Tribunal has adopted only the lesser multiplier. However, the claimants have not preferred any appeal. Otherwise, it is a fit case for enhancement of compensation. Hence, I do not find any merit in this appeal and the same is liable to be dismissed.

10. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

23.03.2023

akv

To

The Motor Accident Claims Tribunal,
Sub Court,
Sankarankovil.



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N.SATHISH KUMAR,J.

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