



C.M.A(MD).No.909 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.M.A(MD).No.909 of 2022
and C.M.P(MD).No.8826 of 2022

The Manager,
ICICI Lombard General Insurance Company Limited,
11/1B, 3rd Floor, G.V.Complex,
Bye-Pass Road, Madurai-10.

...Appellant/2nd Respondent

Vs.

1.Lakshmanan
2.L.Murugeswari
3.L.Abinaya
4.The Manager,

...Respondents 1 to 3/Petitioners 1 to 3

ICICI Bank Limited,
No.5, 56/61, Big Bazaar Street,
Singampunari, Sivagangai District.

....4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to call for the records pertaining to the fair order passed by the Motor Accident Claims Tribunal/Special District Court to deal with Motor Accident Cases, Madurai in M.C.O.P.No.566 of 2018 dated 23.03.2022 and



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set aside the same.

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For Appellant : Mr.P.Pethu Rajesh

For Respondents : Mr.M.Ashok Kumar
for R1 to R3
No-appearance for R4

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal/Special District Court to deal with Motor Accident Cases, Madurai, in M.C.O.P.No.566 of 2018 dated 23.03.2022, the present Civil Miscellaneous Appeal has been filed.

2. The deceased, namely, Arunkumar, who is the son of the claimants 1 and 2 and the brother of third claimant, was aged about 22 years at the time of the accident. On 20.12.2017, while he was riding the motorcycle bearing Registration No.TN-63-AM-9348 from South to North keeping extreme left side of Chennai-Madurai Fourway Track near backside



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of Madurai Bench of Madras High Court, the offending car bearing Registration No.TN-63-AF-3073 came from North to South in a rash and negligent manner and dashed against the motorcycle of the deceased, due to which, the deceased sustained multiple grievous injuries. Hence, the claimants filed M.C.O.P.No.566 of 2018 before the Tribunal claiming a compensation of Rs.60,00,000/- (Rupees Sixty Lakhs only).

3. The second respondent/Insurer of the offending car filed a counter to the extent that the car was proceeding at the most moderate speed by observing all the road rules from north to south direction in the four way of Chennai-Madurai Road. While so, the deceased has driven the two wheeler in a rash and negligent manner in the wrong side of the said four way road from south to north direction and dashed against the first respondent's vehicle and died due to the injuries sustained in the said accident.



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4. On the side of the petitioners, P.W.1 and P.W.2 were examined and Exs.P1 to Exs.P12 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 to Exs.R2 were marked.

5. After considering the oral and documentary evidence, the Tribunal has held that the driver of the offending car drove the vehicle in a rash and negligent manner and dashed against the vehicle and taking into consideration the age of the deceased, the Tribunal has fixed the notional income of Rs.10,000/- and added future prospects of 40%. Totally, a sum of Rs.16,27,000/- (Rupees Sixteen Lakhs Twenty Seven Thousand only) was awarded by the Tribunal. Challenging the same, the present Civil Miscellaneous Appeal was filed.

6. The main contention of the learned counsel for the Insurance Company is that the evidence of R.W.1 and the documents of Exs.R1 to Exs.R5 would clearly show that the deceased has driven the two wheeler in a rash and negligent manner and invited the accident. This aspect was not considered by the Tribunal. That apart, the quantum fixed by the Tribunal is



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also not proper and the monthly income has been fixed in excessive. Hence, he prays for allowing the appeal.

7. The learned counsel appearing for the respondents 1 to 3 would submit that though the evidence was recorded on the side of the appellants to show that the accident was due to rash and negligent manner of the deceased, even the driver of the offending car was not examined. Merely on the basis of the invalid documents, the negligence cannot be inferred against the deceased.

8. In the light of the above submissions, the points now arise for consideration as follows:-

(i) Whether the deceased was driving the vehicle in a rash and negligent manner at the time of the accident? and

(ii) Whether the quantum fixed by the Tribunal is in accordance with law?



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9. It is the specific contention of the respondents 1 to 3 that the deceased was riding the motorcycle from south to north, keeping extreme left side of Chennai-Madurai Fourway Track. However, the offending car came in the opposite direction at a high speed and dashed against the motorcycle. To prove the stand of the respondents, P.W.2, eyewitness, was examined. Though it is the contention of the appellant that the deceased came in a wrong side, it is relevant to note that to establish the same, except xerox copies of some of the statements recorded under Section 161 Cr.P.C., and a closure report, no other document was filed and the Investigation Officer, who conducted the investigation who said to have filed a closure report, was also not examined. Merely on the basis of rough sketch which is said to have been drawn by the Investigation Officer, the negligence cannot be inferred. Whether the Rough sketch has been prepared on the spot and whether it has been reached to court in time and whether it has been prepared for filing closure report? are all the matters of evidence, but it has to be examined before the Court of law. Therefore, merely on the basis of filing of such documents, the Court cannot infer negligence. It is relevant to note that even assuming that such closure report has been filed, the



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Investigation Officer ought to have examined to show that the accident was taken place only due to negligence on the part of the deceased.

10. That apart, even any findings recorded by the criminal Court as to the negligence would not be a conclusive proof. As far the negligence aspect is concerned, it has to be proved only before the Tribunal. Such being a position of law, merely on the basis of some documents, the contention of the Insurance Company cannot be countenanced, whereas, the evidence of eyewitness also clearly shows that only the driver of the offending vehicle has driven the vehicle in a rash and negligent manner which resulted in the accident. Hence, the deceased sustained multiple grievous injuries. Further, there was no motive for eyewitness for giving the false evidence. Accordingly, the contention of the appellant is rejected in this regard.

11. As far as the quantum is concerned, it is the contention of the Insurance Company that the Tribunal has fixed the notional income at the rate of Rs.10,000/- per month. According to the Insurance Company, it is excessive. Taking into account the fact that the deceased is aged about 22



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years and he is said to have worked as painter, the Tribunal has fixed the monthly income of the deceased as Rs.10,000/-. Hence, the contention of the appellant in this regard, is rejected.

12. As far as the future prospects are concerned, as per the dictum of the Hon'ble Supreme Court of India in the case of *National Insurance Company vs. Pranay Sethi and others*, reported in *2009(2) TNMAC 1*, the Tribunal, after adding 40% of future prospects, has deducted 50% for personal expenses, since the deceased was a bachelor. This also appears to be reasonable.

13. Therefore, this Court do not find any infirmity in the award of the Tribunal passed in M.C.O.P.No.566 of 2018. Hence, the appellant is directed to deposit the amount awarded by the Tribunal, if not deposited, within a period of four weeks from the date of receipt of a copy of this order.



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14. Accordingly, this Civil Miscellaneous Appeal is dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet : Yes/No
ssb

To

The Motor Accident Claims Tribunal/Special District Court to deal with
Motor Accident Cases, Madurai



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N. SATHISH KUMAR, J.

ssb

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