



C.M.A.(MD).No.554 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.11.2023

Delivered on: 12.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

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and

C.M.P.(MD)No.6413 of 2018

National Insurance Company Limited,
Tirunelveli.

... Appellant / Respondent No.3

Vs.

1.Gomathy

2.Nallathai

3.Abathukathan

4.Yogeeswaran

5.Kamalam

... Respondents 1 to 5 / Petitioners

6. Marimuthu

... 6th Respondent/1st Respondent

7.Gnanapandithan

... 7th Respondent/2nd Respondent

8.Iffco Tokio General Insurance

Company Limited,

North Bye Pass Road,

Vannarapettai, Tirunelveli

... 8th Respondent / 4th Respondent



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Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed in M.C.O.P.No.9 of 2017, dated 29.08.2017, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Tenkasi.

For Appellant : Mr.A.S.Mathialagan
For Respondents : Mr.R.J.Karthick for R2 to R5
: Mr.V.Sakthivel for R8
: R1 Died
: No appearance for R6 & R7

JUDGMENT

P.B.BALAJI,J.

The Insurance Company, aggrieved by the award in M.C.O.P.No.9 of 2017 on the file of the Motor Accident Claims Tribunal – Additional District, Thenkasi, is the appellant before us.

2. The respondents 1 to 5 herein, being the mother and siblings of the deceased one Malaiyarasu, approached the Tribunal, seeking compensation of Rs.50,00,000/-. It is the case of the claimants that the deceased was aged 45 years and earning Rs.50,000/- per month, being the Principal of a private tuition centre and also doing straw export business. On 14.05.2011, when the said Malaiyarasu was riding a two wheeler, a



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Mahindra Van dashed against the said two wheeler, resulting in grievous injuries being sustained by said Malaiyarasu, who was taken to the Government Hospital for treatment and later, shifted to other Hospitals for specialized treatment. However, he succumbed to the injuries, on 31.05.2011.

3. The appellant as the third respondent, viz., insurer of the Mahindra Van, filed a counter stating that the deceased was not doing any export business or running any private tuition centre. Further, the medical expenses alleged to have been spent was also excessive and the age of the first petitioner – first claimant was 65 years and the third petitioner – third claimant was also not the dependent on the deceased and therefore, the appellant sought for dismissal of the claim petition.

4. The 8th respondent as the 4th respondent in M.C.O.P, viz., the insurer of the motor cycle which has driven by the deceased filed a counter, stating that they are not liable to pay any compensation, as the accident, even according to the claimants, occurred only due to the rash and negligent driving of the Mahindra Van driver and further the deceased



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was not a third party and therefore, they could not claim compensation against 'own insurer'.

5. Before the Tribunal, the 4th claimant - Yogeswaran examined himself as P.W.1 and an occurrence witness, viz., Manikandan examined as P.W.2 and 24 documents were marked as Ex.P1 to Ex.P24 on the side of the claimants. On the side of the respondents, one Ramamoorthy was examined as R.W.1 and copy of the Insurance Policy of the two wheeler was marked as Ex.R1.

6. The Tribunal relying on the F.I.R – Ex.P1, Postmortem Certificate – Ex.P2, rough sketch Ex.P23 and copy of observation mahazer – Ex.P24, found that the driver of the Mahindra Van was the cause of the accident, as he was driving the van in a rash and negligent manner and dashed against the Hero Honda, coming in the opposite direction. The occurrence witness – P.W.2 also let in evidence that the Van driver alone was at fault. The Tribunal also took into account that the Police also found that the Mahindra Van driver was responsible for the accident and therefore, ultimately held that the Mahindra Van, driven by its driver, in a rash and negligent manner, was alone the cause of the accident. Insofar as



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the compensation, the Tribunal found that despite the claim that the deceased was earning Rs.50,000/- p.m, no reliable evidence was let in and the Tribunal fixed the income notionally at Rs.18,000/- p.m and also adding 30% (Rs.5,400/-) towards future prospects and deducted 50% (Rs.11,700/-) towards personal and living expenses and adopting a multiplier of “13” and awarding Rs.2,50,000/- towards loss of love and affection, Rs.25,000/- towards funeral and transport expenses, Rs.30,000/- towards loss of estate and Rs.6,32,273/- towards medical expenses, arrived at a total compensation of Rs.27,62,273/- (rounded off to Rs.27,62,280/-) payable along with interest at the rate of 9% p.a..

7. The said award is challenged by the Insurance Company on the grounds that the Tribunal has erred in fixing the monthly income at Rs.18,000/-, in the absence of any income proof provided by the claimants; the Tribunal also excessively awarded Rs.2,50,000/- towards love and affection; the Tribunal has also awarded 9% p.a, which is against the settled legal position; the Tribunal has fixed 30% towards future prospects, which is excessive. For all theses grounds, the award is sought to be set aside.



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8. We have heard Mr.A.S.Mathialagan, learned counsel for the appellant, Mr.R.J.Karthick, learned counsel for the claimants, Mr.V.Sakthivel, learned counsel for the 8th respondent. We have also perused the records and also the award of the Tribunal.

9. With regard to the liability, we have independently assessed the oral and documentary evidence available on records. We find that the Tribunal has rightly found from the available evidence and came to the conclusion that the Mahindra Van driver was responsible for the accident and therefore, the appellant Insurance Company was jointly and severally liable to compensate the claimants, along with the owner of the said Mahindra Van. We do not deem it fit to interfere with the said well considered finding of the Tribunal.

10. Insofar as the quantum, the Tribunal having found that the claimants did not produce any documentary evidence to establish their claims that the deceased was earning Rs.50,000/- p.m., from his straw export business and also as Principal of a private tuition centre, erred in



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fixing Rs.18,000/- p.m towards notional income. Eventhough the claimants have filed sale tax receipts and registration certificate of one Rajaperu Enterprise, which was being run by the deceased, which was marked as Ex.P13, the claimants have filed PAN card of the deceased Ex.P16, none of these documents exhibited, established the income of the deceased.

11. From an over all assessment of the oral and documentary evidence available on record, we fix the notional income at Rs.15,000/- pm. The Tribunal awarded 30% towards future prospects, which is excessive and erroneous and the same is reduced to 25%. After adding 25% (Rs.3,750/-) towards future prospects and after deducting 50% (Rs. 9,375/-) towards personal expenses of the deceased and applying multiplier '13', the loss of dependency is Rs.14,62,500/- (Rs.9,375/- X 12 X 13). The award under various head are modified in the ratio laid down in **Pranay Sethi's** case and **Sarla Verma's** case and the claimants are entitled to Rs. 2,00,000/- (Rs.40,000/- to each claimant) towards loss of love and affection, Rs.15,000/- towards loss of estate, Rs.



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15,000/- towards loss of funeral expenses.
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12. Insofar as the Medical Expenses are concerned, since the Tribunal has taken note of Ex.P8 to Ex.P11, awarded Rs.6,32,073/-, the same does not require any interference. In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs. 18,25,200/-	Rs. 14,62,500/-	reduced
2.Loss of love & affection (Claimants 1 to 5)	Rs. 2,50,000/- each Rs.50,000/-	Rs. 2,00,000/- each Rs.40,000/-	reduced
3.Funeral & Transport expenses	Rs. 25,000/-	Rs. 15,000/-	reduced
4.Medical expenses	Rs. 6,32,073/-	Rs. 6,32,073/-	confirmed
7.Loss of estate	Rs. 30,000/-	Rs. 15,000/-	reduced
Total Compensation	Rs. 27,62,273/-	Rs. 23,24,573/-	Reduced

13. In fine, the Civil Miscellaneous Appeal stands partly allowed and the compensation awarded by the Tribunal is reduced from Rs.27,62,273/- to Rs.23,24,573/-. The first claimant, who is the mother of



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the deceased is entitled to Rs.13,24,573/- with proportionate interest and costs, the second and fifth claimants, who are the sisters of the deceased are entitled to Rs 2,50,000/- each with proportionate interest, the claimants 3 and 4, who are the brothers of the deceased are entitled to Rs 2,50,000/- each with proportionate interest.

14. The appellant / Insurance Company is directed to deposit the modified award amount of Rs.23,24,573/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. Excess amount, if any, shall be refunded to the appellant / Insurance Company.

15. On such deposit being made, the respondents / claimants are permitted to withdraw the award amount along with interest and costs as apportioned by this Court, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. There



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shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

16. However, we have found from the notice sent from this Court to the mother of the deceased, first claimant, the same was returned with the endorsement that she is dead. However, the parties to the above Civil Miscellaneous Appeal have not brought it to our notice. The Tribunal, therefore, may call upon the claimants to prove the same factum and if it is true that the first claimant-mother of the deceased is no more, then the entire compensation shall be paid to the remaining claimants, two sisters and two brothers equally.

(T.K.R.J.) & (P.B.B.J)
12.12.2023

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Ls

To

- 1.The Motor Accident Claims Tribunal
(Additional District Judge), Virudhunagar.
- 2.The Section Officer,



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VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI, J

Ls

judgment in
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