



C.M.A(MD)Nos.668 & 669 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.04.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.668 & 669 of 2018

C.M.A(MD)N0.668 of 2018:

The Branch Manager,
The Oriental Insurance Company Limited,
Kamala Subramaniam Arcade,
1st Floor 2851/35, Trichy Main Road,
Thanjavur City, Thanjavur District.

... Appellant/2nd Respondent

Vs.

1.Sumathi

2.Kumar

... Respondents/Petitioners

3.Thirumurugan

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 73 of Motor Vehicles Act, to set aside the award of Rs.18,38,000/- (Rupees Eighteen Lakh and Thirty Eight Thousand only) passed in M.C.O.P.No.1 of 2016, dated 01.09.2016 on the file of the Motor Accidents Claims Tribunal cum II Additional District Judge, Thanjavur.



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C.M.A(MD)N0.669 of 2018:

The Branch Manager,
The Oriental Insurance Company Limited,
Kamala Subramaniam Arcade,
1st Floor 2851/35, Trichy Main Road,
Thanjavur City, Thanjavur District.

... Appellant/2nd Respondent

Vs.

1.Suseela

2.Azhagesan

... Respondents/Petitioners

3.Thirumurugan

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 73 of Motor Vehicles Act, to set aside the award of Rs.18,38,000/- (Rupees Eighteen Lakh and Thirty Eight Thousand only) passed in M.C.O.P.No.2 of 2016, dated 01.09.2016 on the file of the Motor Accidents Claims Tribunal cum II Additional District Judge, Thanjavur.

For Appellant : Mr.K.Balasubramanian
(In both cases)

For Respondents : Mr.G.Karnan
(In both cases)

COMMON JUDGMENT

The present appeals have been filed challenging the award passed by the Motor Accident Claims Tribunal, Thanjavur in M.C.O.P.Nos.1



C.M.A(MD)Nos.668 & 669 of 2018

2. At about 3.00 p.m on 15.10.2015, one Anand was driving a two wheeler with two of his friends, namely Vignesh and Venkatesan. When the said Anand was driving a vehicle in a rash and negligent manner, he lost control of the vehicle and dashed against a neem tree on the road side. In the said accident, Vignesh and Venkatesan who were pillion riders had passed away. The parents of those boys have filed M.C.O.P.Nos.1 and 2 of 2016 before Additional District Court, Thanjavur.

3. According to the claimants, their sons were coolie workers who were earning a sum of Rs.15,000/- per month and the accident has taken place only due to the rash and negligent driving of one Anand. The claimants have further contended that the vehicle belonged to the 1st respondent and it was insured with the 2nd respondent. In both the cases, the claimants sought for a compensation of Rs.25,00,000/-.

4. The owner of the bike had remained ex parte. The insurance company had filed a counter contending that the accident has happened only due to the rash and negligent driving and there was no offending vehicle and therefore, they were not liable to pay any compensation. He further contended that the driver of the vehicle, namely Anand was not having a valid driving license at the relevant point of time. The insurance



C.M.A(MD)Nos.668 & 669 of 2018

company has also specifically contended that admittedly 3 persons have travelled in the 2 wheeler and therefore, they were guilty of contributory negligence.

5. The tribunal after considering the oral and documentary evidence arrived at a finding that the deceased will be earning a sum of Rs.10,500/- as notional monthly income and 50% was added towards future prospects. Thereafter, 50% was deducted towards personal expenses. Applying the multiplier of 18, the loss of dependency was arrived at Rs.17,01,000/-. Under the conventional heads, the tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of love and affection, Rs.2,000/- towards transport expenses and Rs.10,000/- loss of estate. Totally, a sum of Rs.18,38,000/- was awarded in each one of the claim petitions. These two awards are under challenge in the present appeal.

6. According to the learned counsel appearing for the appellant / insurance company, admittedly 3 persons have travelled in the motor bike and therefore, there was contributory negligence on the part of the driver of the vehicle and 50% of the amount should be deducted towards contributory negligence. He further contended that there no proof has been placed before the tribunal that the deceased were coolies and they



C.M.A(MD)Nos.668 & 669 of 2018

were earning a sum of Rs.10,000/- per month or even Rs.6,000/- or Rs.10,500/- per month. He further contended that the tribunal ought not to have awarded a sum of Rs.1,00,000/- towards loss of love and affection. He further pointed out that the deceased persons admittedly being coolies, the tribunal ought not to have added 50% towards future prospects. Hence, he prayed for reducing the compensation and to modify the award to the said effect.

7. Per contra, the learned counsel for the respondents had contended that the Division Bench of our High Court in a judgment ***2019 1 TN MAC 54 (Andal & Others Vs. Avinav Kannan & Another)*** has taken into consideration a sum of Rs.6,500/- of the notional income and thereafter, proceeded to award a sum of Rs.14,30,052/- towards loss of dependency. He further contended that the insurance company has not established that the accident has happened only due to the triples driving. Therefore, no amount could be deducted towards the contributory negligence on the part of the two wheeler. Hence, he prayed for sustaining the award passed by the tribunal.

8. I have carefully considered the submissions made on either side.

9. The primary contention of the learned counsel appearing for the



C.M.A(MD)Nos.668 & 669 of 2018

appellant is that when admittedly 3 persons have travelled in a two wheeler, 50% of the negligence should have been attributed to the driver of the motor bike. He further pointed out there was no offending vehicle and the driver of the vehicle had driven the vehicle in a rash and negligent manner and he had lost control of the vehicle and dashed against the neem tree. Therefore, only the triples driving has caused the accident.

10. This argument is understandable when a claim petition is filed by the driver of the two wheeler. On the other hand, the legal heirs of the pillion riders have filed the present claim petitions. Therefore, this Court is not inclined to consider the reduction of the award on the ground of contributory negligence when the legal heirs of the pillion riders have filed the claim petitions.

11. As rightly pointed out by the learned counsel appearing for the appellant, no records have been placed before the Court that the deceased persons were working as coolies and they were earning a sum of Rs.10,500/-. The Hon'ble Division Bench of our High Court in a judgment reported in **2019 1 TN MAC 54 (Andal & Others Vs. Avinav**

Kannan & Another) for an accident that has taken place in the year 2014, the notional income has been taken as Rs.6,500/-. In the present



C.M.A(MD)Nos.668 & 669 of 2018

case, the accident has taken in the year 2015. Therefore, this Court is inclined to take the notional income of the deceased persons at Rs.6,500/-. The deceased persons were self employed and therefore, the tribunal was not right in adding 50% towards future prospects. Therefore, this Court is inclined to add 40% towards future prospects. When 40% is added to Rs.6,500/-, the monthly income would be at Rs.9,100/-. Admittedly, the deceased are bachelors and therefore, after deducting 50% from Rs.9,100/, the monthly income would be arrived at Rs.4,550/-. Both the deceased persons were aged 19 years and the correct multiplier is 18. Therefore, the loss of dependency is $4,550 \times 18 \times 12 =$ Rs. 9,82,800/-. As rightly pointed out by the learned counsel for the appellant, when there are 2 claimants, each of them would be entitled to Rs.40,000/- towards loss of love and affection. However, a sum of Rs. 1,00,000/- has been awarded. Therefore, this Court is inclined to modify the award of Rs.1,00,000/- under the head of loss of love and affection to Rs.80,000/-. This Court does not find any reason to interfere in the quantum of award under the head of transport expenses and loss of estate.

12. In view of the above said discussions, the award of the tribunal is modified to the following effect:

<https://www.mhc.tn.gov.in/judis>

Loss of dependency : Rs.9,82,800/-



C.M.A(MD)Nos.668 & 669 of 2018

Funeral expenses	: Rs. 25,000/-
Loss of love and affection	: Rs. 80,000/-
Transport expenses	: Rs. 2,000/-
Loss of estate	: Rs. 10,000/-

Total	Rs.10,99,800/-

13. The total award amount of Rs.18,38,000/- awarded by the tribunal in both the appeals are hereby reduced and modified to Rs. 10,99,800/- (Rupees Ten Lakh Ninety Nine Thousand and Eight Hundred only). In both the appeals, each claimant will be entitled to 50% of the said amount. The said amount will carry interest at the rate of 7.5% from the date of claim petition. Excess amount if any deposited by the insurance company, shall be refunded to them along with accrued interest.

14. Both the Civil Miscellaneous Appeals are allowed to the extent as stated above. In the present cases, the claimants being parents, they may be permitted to withdraw the entire amount after filing appropriate application before the tribunal. No costs.

21.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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C.M.A(MD)Nos.668 & 669 of 2018

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To

- 1.The Motor Accidents Claims Tribunal
cum II Additional District Judge,
Thanjavur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)Nos.668 & 669 of 2018

R.VIJAYAKUMAR,J.

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Judgment made in
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