



C.M.A.(MD).No.1082 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1082 of 2017

Sunder Raj

..... Appellant/ Respondent

-vs-

1. Sarabai

2. Jenish

3. Jemisha

.... Respondents /Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 14.11.2016 passed in M.C.O.P.No.30 of 2016, on the file of the Motor Accidents Claims Tribunal (Special Court), Nagercoil.

For Appellant : Mr.S.C.Herold Singh

For Respondents : Mr. F.Deepak
for Caveator – for R1

: Mr.M.Dennis Joe
For R2 and R3



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The present appeal has been filed by the owner of the vehicle challenging the award passed by the Motor Accidents Claims Tribunal (Special Court), Nagercoil, in M.C.O.P.No.30 of 2016.

2. According to the claimants, the deceased was a Mason, aged about 58 years and he was driving a bicycle on 31.12.2014 from Karungal to his house in Pazhavor. At that point of time, the Car belonging to the respondent has come from the rear side and dashed against the deceased person and in the said accident, he sustained serious injuries and he was admitted to hospital and he passed away on 01.01.2015. The claimants have made a claim for a sum of Rs.10,50,000/- (Rupees Ten Lakhs and Fifty Thousand only).

3. The owner had filed a counter contending that he had any valid driving license at the relevant point of time and the deceased was driving in the bicycle in a drunken mood and suddenly he had crossed the road. Therefore, the car driver was constrained to apply sudden break and due to which, the car had dashed against the electrical pole and got capsized.



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Therefore, the accident had happened only due to the negligence on the part of the deceased person and therefore he is not liable to pay any compensation.

4. The Tribunal, after considering the Ex.P1- FIR and EX.P3- Motor Vehicle Inspector's Report and the evidence of P.W.1 and R.W.1 arrived at a finding that the accident has happened only due to the rash and negligent driving on the part of the respondent in the claim petition.

5. Thereafter, the Tribunal has proceeded to hold that the deceased was a Mason based upon Ex.P.5 and Ex.P.9 and arrived at a finding that he was earning a sum of Rs.6,000/- (Rupees Six Thousand only) per month and applying a multiplier of “9” based upon the decision of the Hon'ble Supreme Court, in **Smt.Sarala Verma & Ors. vs. Delhi Transport Corporation & Anr.** reported in **2009(2) TN MAC 1(SC)**, ultimately concluded that the claimants are entitled to a sum of Rs.6,48,000/- (Rupees Six Lakhs and Forty Eight Thousand only) towards loss of income. After arriving at the amount, 1/3rd was deducted and a sum of Rs.4,32,000/- (Rupees Four Lakhs and Thirty Two Thousand only) was awarded towards loss of income. The Tribunal has further awarded a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards



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loss of consortium to the first claimant and a sum of Rs.1,00,000/- (Rupees One Lakh only) to the third claimant towards loss of love and affection. Based upon Ex.P6 and Ex.P8 Medical Bills, the Tribunal has awarded a sum of Rs.41,040/- (Rupees Forty One Thousand and Forty only) towards medical expenses. The Tribunal has further awarded a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards Funeral Expenses and a sum of Rs. 5,000/- (Rupees Five Thousand only) towards Transport Expenses and Rs. 2,500/- (Rupees Two thousand five Hundred only) towards loss of estate. Totally a sum of Rs.6,55,500/- (Rupees Six Lakhs Fifty Five Thousand and Five Hundred only) has been awarded. Challenging the award, the present appeal has been filed by the owner of the vehicle.

6. According to the learned counsel appearing for the appellant, the first respondent in the claim petition was driving the car slowly. However, the deceased person who was driving the bicycle has suddenly turned and the deceased was driving the bicycle in a drunken mood and suddenly crossed the road which resulted in such an accident. Therefore, considering the manner of the accident, the owner of the Car cannot be held liable to pay any compensation.



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7. He further contended that the age of the deceased person is 70 years and he was not a mason by profession and therefore, the monthly income should not have been calculated at Rs.6,000/- (Rupees Six Thousand only) per month.

8. Per contra, the learned counsel for the respondents pointed out that the evidence of P.W1 and R.W.1 clearly establish the manner of accident. Considering the fact that the owner of the car did not have valid driving license and insurance policy, naturally the finding of the Tribunal has to be sustained. The learned counsel for the respondents has further contended that to establish the fact that the deceased person was a mason Ex.P5 and Ex.P.9 are Identity Cards issued by the Government authorities have been produced. These Identity Cards have also established the age of the deceased person at the time of accident. Therefore, he prayed for confirming the award passed by the Tribunal.

9. I have carefully considered the submissions made by the learned counsel on either side.



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10. The primary contention of the learned counsel appearing for the appellant is that the deceased alone was responsible for the accident by driving a bicycle in a drunken mood. However, this Court cannot appreciate the said submission in view of Ex.P.1 – FIR and the manner of accident that is reflected in the claim petition. In fact, the car had dashed against the electrical pole and got capsized. Therefore, it is clear that the car was driven in a rash and negligent manner in a high speed. In view of the said facts, this Court has to confirm the findings of the trial Court with regard to the negligence on the part of the respondent car driver.

11. As far as the issue of age and profession are concerned, that has been proved by the claimants by relying upon the Ex.P5 and Ex.P9. The Tribunal has taken a conservative view with regard to the monthly income of a Mason and it has rightly deducted 1/3rd towards personal expenses. The Tribunal cannot be found fault with for awarding a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards loss of consortium to the first claimant, a sum of Rs.50,000/- (Rupees Fifty Thousand only) each to two children who had lost of their father. Therefore, this Court does not find that the



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award of the Tribunal under any one of the heads is exorbitant or unreasonable. Viewed from any angle I do not find any merit in the Civil Miscellaneous Appeal.

12. Accordingly, the Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs.

30.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal
(Special Court), Nagercoil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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