



C.M.A(MD)No.458 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 22.02.2023

Pronounced on : 20.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.458 of 2020

National Insurance Company Ltd.,
No.40, Perira Street,
Thoothukudi,
Thoothukudi.

... Appellant / 2nd Respondent

Vs.

1.A.Pappa

2.A.Karuppasamy

3.A.Kumarsamy

4.A.Saroja

5.K.Selvam

... Respondents

PRAYER :- This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree made in MCOP.No.298 of 2015, dated 11.09.2017 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Thoothukudi.



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For Appellant : Mr.K.S.Ramakrishnadass
For R1 to R4 : Mr.S.Senthil Sanakara Natha Kumar
For R5 : Mr.M. Lakshmi Mahendran

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.298 of 2015, dated 11.09.2017 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Thoothukudi. The appellant herein is the second respondent and the respondents 1 to 4 herein are the claimants and the 5th respondent is the first respondent in the claim petition.

2.A brief substance of the claim petition is as follows:-

On 09.04.2015, at about 7.45 p.m., when the deceased Ananthappan was riding his bicycle along the Thoothukudi – Palayamkottai Main Road near VOC College at Tuticorin, a bike bearing Regn.No.TN69AB 6313 driven by its driver in a rash and negligent manner dashed against the deceased. The deceased sustained injuries and subsequently, he died on



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13.05.2015. The deceased was aged about 68 years and he was running a hotel and he was earning a sum of Rs.15,000/- per month. The petitioners are the dependants of the of deceased and they claim a sum of Rs. 15,00,000/- as compensation.

3. A brief substance of the counter filed by the first respondent is as follows:-

The petitioners have to prove the manner of the accident. The vehicle was insured with the second respondent and the policy was in force and hence, the petition has to be dismissed.

4. A brief substance of the counter filed by the 2nd respondent is as follows:-

The accident has happened only due to the negligence of the deceased. The petitioners, who are the dependants of the deceased, have to prove the age and income of the deceased. The claim under various heads are excessive. The rider of the two wheeler was not having valid driving licence and the policy conditions are violated.



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5. Three witness were examined and eighteen documents were marked, on the side of the petitioners. Two witness were examined and two documents were marked, on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs.6,95,020/- as compensation.

6. Against the award, the appellant / Insurance Company has preferred this appeal on the following grounds:

The Tribunal failed to consider that the rider of the two wheeler was not having a valid driving licence. The rider of the two wheeler failed to prove the availability of a driving licence. The owner of the vehicle who contest the case also failed to produce the driving licence. The Tribunal is wrong in not accepting the evidence of R.W.1, who has deposed that the rider was not having driving licence. The Tribunal is wrong in fixing the income of the deceased as Rs.7,000/- per month without considering the age of the deceased. The Tribunal without considering the fact that the respondents 2 to 4 are already married and that they are living separately, has awarded a sum of Rs.50,000/- each towards loss of love and affection and the same is excessive.



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7. On the side of the appellant, it is stated that the rider of the vehicle was not having driving licence and that they have not taken any steps to produce the driving licence. The appellant has examined RW.1 an official from the RTO office, who has deposed that the rider of the two wheeler, was not having valid driving licence. Without considering these points the Tribunal has fixed the liability on the Insurance Company.

8. On the side of the claimants, it is stated that R.W.1 has deposed that there was a possibility for the rider to have taken a driving licence in some other place, it was the duty of the appellant to prove that there was no driving licence for the driver.

9. P.W.2 was examined as an independent eye witness. First Information Report was marked as Ex.P1. On the basis of the evidence of P.W.2 and on the basis of the Ex.P1, the Tribunal has fixed the liability on the rider of the two wheeler. The driving licence of the rider of the two wheeler was not marked on the side of the claimants or on the side of the owner of the vehicle. RW.1 was an official from the R.T.O. and he has stated that the rider of the two wheeler was not having valid driving licence at the time of accident. R,W.2, an official from the appellant /



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Insurance Company has also deposed that the rider was not having valid driving licence. It is the duty of the owner of the vehicle to prove that there was no policy violation. The appellant has also not issued notice to the owner to produce the driving licence. It is seen that the appellant has taken steps to prove that there was no driving licence for the rider of the two wheeler. The claimants are 3rd parties to the claim policy, the policy was effective on the date of accident. The 5th respondent is responsible for the accident. There is no dispute regarding the insurance policy hence the petitioner is liable to pay compensation to the claimants. Since the claimants and the owner of the vehicle failed to prove that the rider of the two wheeler was having valid driving licence, it is decided that the appellant has to pay the amount to the claimants at the first instance and the appellant is to be permitted to recover the same from the owner of the vehicle.

10. On the side of the appellant, it is stated that the Tribunal has awarded a sum of Rs.50,000/- for each of the claimants for loss of love and affection which is excessive. Further, the Tribunal has awarded a sum of Rs.2,00,000/- towards mental agony for each of the claimants, which is excessive.



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11. On the side of the respondents / claimants it is stated that the salary of the deceased was proved through Ex.P5. Totally 4 documents were marked. The deceased was running a Parrota Stall and Form "C" licence was marked as Ex.P5 and the notional income is fixed at Rs. 10,000/- per month. The licence issued by the Food Safety Department was marked as Ex.P6.

12. Considering the date of accident, it is decided that the deceased might have earned a sum of Rs.9,000/- per month. After deducting 1/3rd towards his own expenses of the deceased might have contributed Rs. 6,000/- to his family members. The age of the deceased at the time of accident is 68 years and hence, multiplier '5' is applicable. After applying multiplier, the income is calculated as Rs.3,60,000/- (Rs.6,000/- X 12 X 5). The Tribunal has awarded a sum of Rs.2,00,000/- towards loss of love and affection and Rs.2,00,000/- towards mental agony and Rs.15,000/- towards funeral expenses. As per the dictum of the Hon'ble Supreme Court in ***Pranay Sethi's*** case, the claimants are entitled to Rs.70,000/- towards conventional charges.



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13. The total compensation is calculated as follows:-

Loss of income	-	Rs.3,60,000/-
Conventional charges	-	Rs. 70,000/-

Total compensation	-	Rs.4,30,000/-

14. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.6,95,020/- to Rs.4,30,000/-(Rupees Four Lakhs and Thirty Thousand only) which shall carry an interest of 7.5% per annum.

(ii) The appellant / Insurance Company is directed to deposit the compensation amount i.e., Rs.4,30,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.298 of 2015 on the file of the MACT (I Additional District Judge (in charge), Thoothukudi, within a period of eight weeks from the date of receipt of a copy of this order. The Insurance Company is permitted to recover the same from the owner of the vehicle.



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(iii) On such deposit being made, the 1st respondent / claimant is at liberty to withdraw a sum of Rs.2,80,000/-; the respondents 2 to 4 are each entitled to withdraw a sum of Rs.50,000/- together with interest, after following the due process of law, less any amount already received by him. The claimants are not entitled for interest for the default period, if there is any.

20.04.2023

NCC: Yes / No

Index: Yes / No

Internet : Yes / No

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To

1. The Motor Accidents Claims Tribunal,
I Additional District Judge, Thoothukudi.
2. The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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R.THARANI, J.

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Pre - Delivery Judgment made in
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