



C.M.A.(MD)No.508 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.508 of 2023
and
C.M.P.(MD)No.6470 of 2023

The Branch Manager,
National Insurance Company Ltd.,
135-1, First Floor,
Rose Building Main Road,
Kovilpatti,
Tuticorin District

...Appellant /2nd Respondent

Vs.

1.J.Saraswathi

2.Jeyasree

3.Rajeswari

4.Minor Jawahar Ram

...Respondents/Petitioners 1-4

(rep by his mother natural guardian 1st respondent)

5.J.Mangaiarasu

...Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Motor Accident Claims Tribunal cum Sub Court, Sivakasi made in M.C.O.P.no.148 of 2012 dated 20.04.2016.

For Appellant : Mr.Rajamani

For R1 to R4 : Mr.K.Sethuramanujam



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JUDGMENT

Challenging the negligence as well as the quantum fixed by the Motor Accident Claims Tribunal (Sub Court), Sivakasi in M.C.O.P.No.148 of 2012, dated 20.04.2016, the present Civil Miscellaneous Appeal is filed.

2.For the sake of convenience, the parties are referred to herein as per their rank before the Tribunal.

3.The brief facts leading to the filing of the claim petition are as follows:

On 07.01.2010 at about 18.00 hours, the deceased was riding his motorcycle bearing Registration No.TN-67-Y-6085 with his friend and he stopped his motorcycle behind the vehicle bearing Registration No.TN-69-Y-7966. At the time, the mini bus bearing registration No.TN-69-W-0561 driven by its driver in a rash and negligent manner dashed against the motorcycle of the deceased. As a result, the deceased sustained serious injuries and succumbed to the same on the way to hospital. FIR was also registered against the offending vehicle.



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(ii)The first claimant is the wife of the deceased. The claimants 2 to 4 are the children of the deceased. The deceased was working as a Sales Manger and earning a sum of Rs.7,000/- per month. Hence, the claimants have filed the claim petition seeking compensation.

4.The Insurance Company before the Tribunal took a stand that the deceased without noticing the vehicle coming behind him, suddenly had crossed the road and dashed against the vehicle. Further, the deceased was negligent in driving the vehicle. Hence, opposed the claim petition.

5.Before the Tribunal, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and Ex.P1 to Ex.P15 were marked. On the side of the respondents, one witness was examined as R.W.1 and Ex.R1 and Ex.R2 were marked.

6.On appreciation of the evidence available on record, the Tribunal found that only the driver of the offending vehicle/mini bus drove the bus in a rash and negligent manner and awarded the compensation as follows:



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S.No.	Particulars	Amount
1.	Loss of Dependency	Rs. 8,10,000/-
2.	Loss of consortium	Rs. 1,00,000/-
3.	Loss of love and affection to the claimants	Rs. 4,00,000/-
4.	Transportation charges	Rs. 5,000/-
5.	Funeral Expenses	Rs. 25,000/-
6.	Loss of estate	Rs. 5,000/-
	Total	Rs.13,45,000/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the appellant.

7.The learned counsel for the appellant would submit that only the deceased was careless in riding the motorcycle. But, the Tribunal had erred in fixing the liability on the part of the driver of the bus. That apart, as per the dictum laid down by the Hon'ble Supreme Court in *National Insurance Company Ltd., vs. Pranay Sethi and others* [CDJ 2017 SCC 1220], only a sum of Rs.40,000/- alone has to be given under the head of loss of consortium and loss of love and affection, but the Tribunal had awarded a sum of Rs.1 lakhs to the claimants under the said heads and the same has to be reduced. He would further submit that the Tribunal had also erred in fixing the interest at the rate of 9%.



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8.In view of the above submission, now the points arise for consideration in this appeal are:

- (a)whether the Tribunal is right in fixing the liability on the part of the driver of the appellant vehicle*
- (b)Whether the Tribunal is right in fixing the notional income of the deceased at Rs.10,000/-?*

9.Heard the learned counsel appearing on either side and perused the materials placed on record.

10.The evidence available on record clearly establishes the fact that the driver of the offending vehicle was rash and negligent in driving the bus. FIR was also registered against the driver of the offending vehicle. Considering all these aspects, this Court is of the view that the negligence fixed by the Tribunal on the part of the driver of the bus cannot be found fault.

11.The Tribunal considering the documents available on record, particularly, the fact that the deceased is the retired Military Man, had fixed the



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notional income of the deceased at Rs.10,000/- and considering the age of the deceased, the Tribunal adopted the multiplier '9'. This Court is of the view that the income fixed by the Tribunal is just and reasonable and the same does not require any interference.

12.However, the Tribunal had not awarded 10% of future prospects as per the dictum laid down by the Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others*** [CDJ 2017 SCC 1220]. Accordingly, if 10% future prospects is added, the monthly income of the deceased would come around Rs.11,000/- (Rupees Eleven Thousand only) and if multiplier '9' is adopted, the loss of income of the deceased would come around Rs.11,88,000/- (Rupees Eleven Lakhs Eighty Eight Thousand only).

13.Further, the Tribunal had awarded a sum of Rs.1,00,000/- towards loss of consortium and loss of love and affection, which is contrary to the law laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd., vs. Pranay Sethi and others*** [CDJ 2017 SCC 1220]. Accordingly, the same is reduced to a sum of Rs.40,000/- (Rupees Forty Thousand only). In the result, the claimants are entitled to the compensation as follows:



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S.No.	Particulars	Amount
1.	Loss of Dependency	Rs.11,88,000/-
2.	Loss of consortium	Rs. 40,000/-
3.	Loss of love and affection to the claimants	Rs. 1,60,000/-
4.	Transportation charges	Rs. 5,000/-
5.	Funeral Expenses	Rs. 25,000/-
6.	Loss of estate	Rs. 5,000/-
	Total	Rs.14,23,000/-

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. However, the percentage of interest fixed by the Tribunal at 9% is modified to 7.5%. and the compensation awarded by the Tribunal is modified as follows.

15. The appellant is directed to deposit the entire compensation amount i.e., 14,23,000/- (Rupees Fourteen Lakhs and Twenty Three Thousand only) as modified by this Court with interest at the rate of 7.5% from the date of petition till the date of realization to the credit of M.C.O.P.No.148 of 2012, on the file of the Motor Accident Claims Tribunal /Sub Court, Sivakasi within a period of six weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the first claimants is permitted to withdraw a



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sum of Rs.7,23,000/- (Rupees Seven Lakhs and Twenty Three Thousand only), the second claimant is entitled to withdraw a sum of Rs.2,00,000/- (Rupees Two Lakhs only), the third and fourth claimants are entitled to withdraw a sum of Rs. 2,50,000/- each (Rupees Two Lakhs and Fifty Thousand), less the amount if any already withdrawn, by making necessary application before the Tribunal. The Tribunal shall deposit the share of the minor claimant in a Fixed Deposit in any one of the Nationalized Banks, till the minor claimant attains majority. The guardian of the minor claimant is permitted to withdraw the interest accrued thereon once in three months directly from the bank. No costs. Consequently, connected miscellaneous petition is closed.

14.06.2023

NCC : Yes/No

Index : Yes/No

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To

1.The Motor Accident Claims Tribunal /
Sub Court, Sivakasi.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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