



CMA NO.381 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 20.06.2024	Judgment Pronounced on: 18.07.2024
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CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.381 of 2022

1.C.Dhanapal
2.K.Sumathi
3.D.Sudha
4.D.Latha
5.D.Venkatesan
6.D.Sathishkumar

... Appellants /
Petitioners

Vs.

1.Malarvannan

2.The Divisional Manager,
United India Insurance Co. Ltd.,
Third Party Service Hub,
Plot No.35, 36, 37, A.R.Plaza,
45 Feet Road, Balaji Nagar Extn.,
Saram, Puducherry – 605 011.

... Respondents /
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the appeal and enhance the compensation in M.C.O.P.No.3389 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District & Sessions Judge, Cuddalore.

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For Appellants : Ms.Ramya V.Rao
For Respondent 1 : Out of Station
For Respondent 2 : Mr.D.Bhaskaran

J U D G M E N T

Feeling aggrieved over the award passed in M.C.O.P.No.3389 of 2018 on the file of the Motor Accident Claims Tribunal, I Additional District & Sessions Judge, Cuddalore, (Henceforth 'Tribunal' for brevity) the petitioners therein have filed this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties will hereinafter be referred to as per their array before the Tribunal.

Petitioners case:

3.The case of the petitioners is that Sarasu is the wife of the 1st petitioner and mother of the petitioners 2 to 6. On May 04, 2018, at about 11.00 hours, when the said Sarasu was walking from East to West, the the 1st respondent's motorcycle bearing Registration No.TN 61 K 3255 approached



from behind in a rash and negligent manner and collided with and dashed the deceased-Sarasu leading to the accident. Immediately after the accident, Sarasu was taken to Government Hospital, Parangipettai and then transferred to Jipmer Hospital, Puducherry. In spite of treatment, the Sarasu passed away. According to the petitioners, at the time of accident, the deceased-Sarasu was engaging in a Milk and Curd vending business and thereby earned a sum of Rs.15,000/- per month. Hence, the petitioners filed the original petition seeking compensation of Rs.25,00,000/- and costs.

1st respondent's case:

4. The 1st respondent filed counter statement claiming that he sold the motorcycle bearing Registration No. TN 61 K 3255 to one Silambarasan on 23.12.2017. After duly signing the transfer form, he gave it to Silambarasan. One Mohamed Kaja Kamaludeen borrowed the vehicle from the Silambarasan and caused the accident. First Information Report (FIR) in Crime No.74 of 2018 was registered by Port Novo Police Station against the driver of the vehicle bearing Registration No. TN 61 K 3255. Accordingly, he prayed to dismiss the claim petition against him.

**2nd respondent's case:**

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5.The 2nd respondent filed counter denying the manner of the accident. The 2nd respondent further stated that the rider of the motorcycle namely Mohamed Kaja Kamaludeen, drove the motorcycle without a valid driving license at the time of accident. The 1st respondent – owner of the motorcycle has not informed the alleged accident to the 2nd respondent. Further, the 2nd respondent denied the age, avocation and monthly income of the deceased Sarasu and accordingly prayed to dismiss the petition.

Witness and documents:

6.At trial, on the side of the petitioners, 1st petitioner was examined as P.W.1 and Exs.P-1 to P-11 were marked. Also one Vimalraj was examined as P.W.2 and the 6th petitioner was examined as P.W.3. On the side of the respondents, they did not examine any witnesses, but marked Exs.R-1 to R-3.

**Tribunal findings:**

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7.The Tribunal found that the accident occurred due to the rash and negligent riding of the 1st respondent's motorcycle bearing Registration No.TN 61 K 3255. Further, it was held that at the time of the accident, the 1st respondent's motorcycle was insured with the 2nd respondent and hence, the 2nd respondent is liable to pay the compensation. However, at the time of accident, the rider of the motorcycle did not possess a valid driving license. Hence, the 2nd respondent shall pay the compensation amount to the petitioners and recover the same from the 1st respondent. Regarding the quantum of compensation, the Tribunal concluded that at the time of accident, the deceased-Sarasu was about 48 years old and fixed a sum of Rs.7,500/- as notional monthly income. Accordingly, the Tribunal awarded compensation as follows:

(1) Loss of Income	-	Rs.11,70,000/-
(2) Loss of consortium (10% enhanced)	-	Rs.44,000/-
(3) Loss of love and affection 5,000 X 6	-	Rs.30,000/-
(4) Transport Expenses	-	Rs.15,000/-
(5) Funeral Expenses (10% enhanced)	-	<u>Rs.16,500/-</u>
		<u>Rs.12,75,500/-</u>



8. Feeling aggrieved with said award, the petitioners have filed this Civil Miscellaneous Appeal.

Discussion and Decision:

9. This Court has considered the submissions made on either side and perused the materials available on record.

10. The Insurance Company has not preferred any appeal. There is clearly no dispute with regard to the manner of the accident. Admittedly the rider of the 1st respondent's motorcycle did not possess a valid driving license. Hence, the 2nd respondent-Insurance Company is liable to pay the compensation amount and is entitled to recover the same from the 1st respondent.

11. As far as quantum of compensation is concerned, according to the petitioners at the time of accident, the deceased-Sarasu was engaged in Milk and Curd vending business. The petitioners claimed that the deceased



was earning a sum of Rs.15,000/- per month at the time of accident. But, the petitioners did not produce any document to substantiate the alleged avocation and income of the deceased. The accident occurred in the year 2018. Hence, considering the year of accident, age of the deceased, this Court is of the considered opinion that the deceased would have earned a sum of Rs.13,000/- per month. Accordingly, this Court fixes the notional monthly income of the deceased at Rs.13,000/-. The age of the deceased at the time of accident was 48 years as per Ex.P-10 (PAN Card). The Tribunal has rightly applied the multiplier of '13' and rightly granted 25% towards future prospects. There are six petitioners in the original petition. The 1st petitioner is the husband of the deceased and the petitioners 2 to 6 are the children of the deceased and who were all majors on the date of accident. Hence, 1/5th deduction made by the Tribunal towards personal expenses of the deceased is not correct. It is highly unlikely that all the major children were solely dependent on the income earned by the deceased. Therefore, this Court is of the view that it would be just and proper to deduct 1/3rd towards the personal expenses of the deceased instead of 1/5th. Thus, the compensation under the head of loss of income is calculated as follows:



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Monthly income fixed	:	Rs.13,000/-
Future prospects to be added	:	25%
Notional Income arrived at	:	Rs.13,000/- + 25% Rs.16,250/-
After deducting 1/3 rd for personal expenses	:	Rs.10,833.33
Multiplier to be adopted	:	13
Loss of Dependency Rs.10,833.33 X 12 X 13	:	Rs.16,90,000/-

12.The compensation awarded by the Tribunal viz., Rs.44,000/- towards loss of consortium and Rs.30,000/- (Rs.5,000/- each to petitioners) towards loss of love and affection is modified as the petitioners are entitled to a sum of Rs.2,40,000/- (Rs.40,000/- each) towards loss of love and affection as per the decision of *National Insurance Co. Ltd., Vs. Pranay Sethi and others*, reported in *[2017 (2) TN MAC 609 (SC)]*. The compensation awarded by the Tribunal towards transportation and funeral expenses are not in tune with *Pranay Sethi's* case law, hence, the same are reduced to Rs.10,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. The petitioners are entitled to a sum of



Rs.15,000/- towards loss of estate. Thus, the compensation awarded by the

Tribunal is modified as follows:

1.Loss of income	-	Rs.16,90,000/-
2.Loss of love and affection	-	Rs.2,40,000/-
3.Transport expenses	-	Rs.10,000/-
4.Loss of Estate	-	Rs.15,000/-
5.Funeral Expenses	-	Rs.15,000/-

Total		Rs.19,70,000/-

Conclusion:

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal viz., Rs.12,75,500/- is hereby enhanced to Rs.19,70,000/- (Rupees Nineteen Lakh Seventy Thousand Only).

The 2nd respondent – Insurance Company is directed to deposit the enhanced compensation amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit to the credit of Motor Accident Claims Tribunal, I Additional District & Sessions Judge, Cuddalore, within eight weeks from the date of receipt of a copy of this judgment. After making deposit, the 2nd respondent – Insurance Company is entitled to recover the



same from the 1st respondent as if a decree is passed in favour of the 2nd respondent and against the 1st respondent in the original petition. Upon such deposit, the petitioners / appellants are permitted to withdraw their respective share of the award amount as per the ratio of apportionment made by the Tribunal together with interest and costs by making necessary application before the Tribunal. Insofar as the enhanced compensation is concerned, the deficit court fee, if any, shall be paid by the appellants within a period of four weeks from the date of receipt of a copy of this judgment. No costs.

18 / 07 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
krk/tk

To

1. The I Additional District & Sessions Judge,
Motor Accident Claims Tribunal,



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1. Additional District & Sessions Court,
Cuddalore.

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2. The Section Officer,
VR Section,
Madras High Court,
Chennai.



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R.SAKTHIVEL, J.

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Pre-Delivery Judgment made in
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