



CMA NO.1720 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 12 / 06 / 2024

JUDGMENT PRONOUNCED ON : 10 / 07 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.1720 OF 2022

AND

CMP NO.12544 OF 2022

The Branch Manager
United India Insurance Co. Ltd.,
No.3, Giri Ram Buildings, Main Road,
Gobichettipalayam – 638 452. Erode District.
Now at Regional Office
No.178, Dr.Nanjappa Road,
Coimbatore – 641 018.

... Appellant /
3rd Respondent

Versus

1.Krishnaveni
2.Minor Vivin
Represented by his Mother / Guardian
Ms.Krishnaveni

... Respondents 1&2 /
Petitioners

Pavayal (Deceased)
3.Arunkumar
4.Manikandan

... Respondents 3&4 /
Respondents 1&2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor



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Vehicles Act, 1988, against Award dated 26.10.2021 passed in M.C.O.P.No.289 of 2018 by the learned Additional District and Sessions Judge, Motor Accident Claims Tribunal (III Additional District and Sessions Court), Gobichettipalayam.

For Appellant : Mr.R.Rajesh

For Respondents 1&2: Mr.K.Sathish Kumar
(R2 Minor represented by R1)

For Respondent 3 : Served – No appearance

J U D G M E N T

Feeling aggrieved with the Award dated October 26, 2021 passed by the 'Motor Accident Claims Tribunal (III Additional District and Sessions Court) Gobichettipalayam' [henceforth 'Tribunal' for brevity] in M.C.O.P.No.289 of 2018, the third respondent therein, namely United India Insurance Company Limited has preferred this Civil Miscellaneous Appeal.

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

Petitioners' case

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3. First petitioner is the wife, second petitioner is the son and third petitioner is the mother of the deceased Gopal. On May 25, 2017 at about 17.00 hours, the said Gopal was riding his Motorcycle bearing Registration No.TN36-K-1578. While nearing Bommanaickenpalayam Society, the first respondent, who was coming in the opposite direction, on a Motorcycle bearing Registration No.TN33-AS-8455, collided with the said Gopal's motorcycle. In the said accident, the first petitioner's husband Gopal sustained grievous head injury and lost consciousness. He was immediately taken to SK Hospital, where first-aid was given and thereafter, he was referred to Royal Care Hospital at Coimbatore, where the Doctor informed that there is no possibility of survival. Hence, Gopal was discharged from Royal Care Hospital and taken to the Government Hospital, Gobichettipalayam. On the way, Gopal succumbed to the head injury. A criminal case was registered against the first respondent in Crime No.362 of 2017 under Sections 279 and 337 of the Indian Penal Code, 1860 (IPC) on the file of Gobichettipalayam Police Station. At the time of accident, deceased-Gopal was a Farmer engaged in agriculture and was also had ten milch cows



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and earning a sum of Rs.35,000/- per month. Accordingly, the petitioners filed

Motor Claim Original Petition claiming compensation for a sum of Rs.10,00,000/- (Rupees Ten Lakh Only) from the respondents.

1st and 2nd Respondents' case

4.First respondent is the rider and second respondent is the owner of the Motorcycle bearing Registration No.TN33-AS-8455.

5.Despite service of notice, first and second respondents did not choose to contest the petition and hence they were called absent and accordingly, set *ex-parte*.

3rd Respondent's case

6.Third respondent is the insurer of the second respondent's Motorcycle. The third respondent – Insurance Company filed a counter wherein it is averred that the accident occurred only due to the rash and negligent riding of the deceased-Gopal. In the Accident Register issued by SK



Hospital, Gobichettipalayam, it is clearly mentioned that *'the deceased fell down from the two wheeler and cause unknown'*. Therefore, it is false to say that the alleged accident occurred due to the collision caused by the Motorcycle bearing Registration No.TN33-AS-8455. Further, at the time of accident, the first respondent had no valid driving license to drive the Motorcycle. Therefore, the third respondent is not liable to pay any compensation to the petitioners. Accordingly, he prayed to dismiss the Original Petition.

7.At trial, on the side of the petitioners, first petitioner-Krishnaveni was examined as P.W.1, Kaliyannasamy was examined as P.W.2, Yasodha, sister-in-law of the first petitioner was examined as P.W.3 and Jothi was examined as P.W.4 and Ex-P.1 to Ex-P.25 were marked. On the side of the respondents, one Shanu, Manager attached to the third respondent – Insurance Company was examined as R.W.1 and M.R.Mukundan, Motor Vehicle Inspector was examined as R.W.2 and Ex-R.1 and Ex-R.2 were marked.

8.After analyzing the oral and documentary evidence, the



Tribunal came to the conclusion that the accident occurred due to the rash and negligent riding of the first respondent and hence, the third respondent, who is the insurer of the second respondent's vehicle is liable to pay compensation to the petitioners.

9.Regarding quantum of compensation, the Tribunal came to the conclusion that the petitioners have produced a Partition Deed to show that the deceased-Gopal was a farmer. But the petitioners failed to produce Adangal Extract to show that the deceased earned a sum of Rs.35,000/- per month. Hence, the Tribunal fixed notional income at the rate of Rs.9,000/- per month. At the time of accident, the deceased was 62 years. Hence, after deducting 1/3rd share as his personal expense and applying multiplier of 7, the Tribunal awarded a sum of Rs.5,04,000/- under the head 'loss of income'. Further, the Tribunal awarded compensation under various heads as tabulated hereunder:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of income (6000 X 12 X 7)	Rs.5,04,000.00
2	Medical Expenses	Rs.53,806.35



<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
3	Ambulance Expenses	Rs.9,700.00
4	Transportation charges	Rs.10,000.00
5	Loss of love and affection for 1 st petitioner	Rs.1,00,000.00
6	Loss of love and affection for 2 nd petitioner	Rs.50,000.00
7	Funeral expenses	Rs.25,000.00
	Total	Rs.7,52,506.35
	Rounded off	Rs.7,52,507.00

9.1.Thus, the Tribunal awarded a sum of Rs.7,52,507/- as compensation to the petitioners.

10.Feeing aggrieved with the Award passed by the Tribunal, the third respondent – Insurance Company preferred this Civil Miscellaneous Appeal.

11.This Court has heard the submissions made on either side.

12.The learned counsel for the third respondent - Insurance Company has submitted that the Tribunal, without any basis, has fixed a sum of Rs.9,000/- as notional income of the deceased, which is erroneous; that the said notional income of Rs.9,000/- is on higher side; that the first respondent



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had no valid driving license at the time of accident. Hence, the third respondent is not liable to pay any compensation and accordingly, he prayed to allow the Civil Miscellaneous Appeal.

13.Per contra, learned counsel for the respondents 1 and 2 / petitioners has submitted that despite the fact that the petitioner's side produced Ex-P.8 Partition Deed, the Tribunal fixed the notional income only at the rate of Rs.9,000/- per month, which is on the lower side. Hence, he prayed to dismiss the Civil Miscellaneous Appeal.

Discussion and Decision

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

15.An FIR was registered against the first respondent under Sections 279 and 337 of IPC in Crime No.362 of 2017 on the file of Gobichettipalayam Police Station and after investigation, the Police filed a charge sheet against the first respondent and the same was taken on file as



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C.C.No.31 of 2018 on the file of Judicial Magistrate – I, Gobichettipalayam.

Further, on the side of the petitioners, P.W.4 was examined, who is the ocular witness to the accident. From a conjoint reading of evidence of P.W.1, P.W.2, P.W.4 and Ex-P.1 to Ex-P.7, it is evident that the petitioners have proven that the accident occurred due to the rash and negligent riding of the first respondent. Ex-P.6 = Ex-R.2 Motor Vehicle Inspection Report reveals that neither the first respondent nor the second respondent has produced the Driving License of the second respondent. Moreover, they did not contest the original petition and they were set *ex-parte* before the Tribunal. Since at the time of the accident, the second respondent's Motorcycle was insured with the third respondent – Insurance Company, the third respondent – Insurance Company is liable to pay compensation to the petitioners and recover the same from the first and second respondents.

16.Regarding quantum of compensation, P.W.1 deposed that her husband-Gopal was a farmer and was doing agriculture and her family owned an extent of 5 Acre 50 Cents of land under Ex-P.8-Partition Deed.

17.This Court has perused Ex-P.8 Partition Deed. As per the Partition Deed, an extent of 5 Acre 50 Cents was allotted to Periyasamy as 'A'



Schedule property. Periyasamy is none other than the father of the deceased Gopal. Periyasamy had one son namely Gopal (deceased) and one daughter Yasodha (P.W.3). On perusal of Ex-P.8, it appears that the said property is ancestral in character. Further, a bare perusal of Ex-P.8 would show that the said extent of lands has sufficient irrigation facilities including the irrigation facility from Lower Bhavani Irrigation Project. However, the Tribunal failed to take note of the said facts.

18. Admittedly, the deceased-Gopal married Thenmozhi as his first wife and later, the said marital tie was severed by way of order of the Court made in H.M.O.P.No.21 of 2001 dated June 22, 2001 vide Ex-P.9. Then he married the first petitioner – Krishnaveni. The first petitioner and the second petitioner, who is a minor, cannot effectively practice agriculture and manage the property. In other words, it is not feasible for them to earn income on par with the income earned by the deceased Gopal. The Tribunal miserably failed to take into account the said fact too. However, the petitioners have not preferred any appeal. In such circumstances, this Court is of the considered view that there is no reason to interfere with the quantum of compensation.



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19.As regards the other point that the deceased's mother Pavayal died during the pendency of the Original Petition leaving behind the petitioners 1, 2 and one Yasodha. It is the contention of the third respondent that Yasodha is a necessary party to the Suit. In this regard, the daughter of Pavayal namely Yasodha, who was examined as P.W.3 deposed that she does not claim any share in the share of her mother-Pavayal. Hence, the plea of non-joinder of Yasodha is not fatal to the petition.

20.The quantum of award passed by the Tribunal is confirmed. The appellant – Insurance Company is directed to pay the award amount to the petitioner nos.1 and 2 as ordered by the Tribunal and recover the same from the first and second respondents. To that extent alone, the terms of the Award dated October 26, 2021 passed by the Tribunal is modified. The appellant– Insurance Company shall deposit the Award amount, less the amount if any already deposited, with interest as ordered by the Tribunal within eight (8) weeks from the date of receipt of a copy of this judgment.



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21.In the result, the Civil Miscellaneous Appeal is partly allowed as indicated above and without costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

The Additional District and Sessions Judge
Motor Accident Claims Tribunal
(III Additional District and Sessions Court)
Gopichettipalayam.



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R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
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