



C.M.A.No.902 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 28.07.2023

Judgment Delivered On : **14.02.2024**

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.902 of 2018

and

CMP.No.7485 of 2018

M/s. United India Insurance Company Ltd.,
Divisional Office No.1,
104, Peramanur Road,
Salem – 7.

... Appellant

Versus

1.Maheswari

2.Minor Vaisanavi

3.Minor Divya

4.Govindammal

5.The New India Assurance Company Ltd.,
2nd Floor, Fort Main Road,
Shevaipettai, Salem – 636 002.

6.S. Muthukumaran

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 07.10.2017 made in M.C.O.P.No.641 of 2012 on the file of Motor Accident Claims Tribunal, (Special District Judge), Salem.



C.M.A.No.902 of 2018

For Appellant : Mr. D. Bhaskaran
For Respondents : Mr. R. Sivakumar (for R5)
: Notice Served (for R1 to R4)
: No Appearance (for R6)

JUDGMENT

The appellant herein is the Insurance Company, which was arrayed as fourth respondent in M.C.O.P.No.641 of 2012 on the file of the Motor Accident Claims Tribunal, Salem.

2. The respondents 1 to 3 herein are claimants before the Tribunal. The fourth respondent herein is the owner of the Tempo bearing Registration No.TN-45-Q-1441. The fifth respondent herein is the insurer of the fourth respondent's Tempo, and the sixth respondent is the owner of the motorcycle bearing Registration No.TN-30-H-7170.

3. The brief facts of the case are that on 11.02.2012, while the deceased was riding the motorcycle bearing Registration No. TN-30-H-7170 near Pothampatty Rajamanickem Grocery shop from Salem to Elampillai main road, the fourth respondent's Tempo bearing Registration No. TN-45-



C.M.A.No.902 of 2018

WEB COPY

Q-1441 was parked on the roadside, which was insured with the fifth respondent/Insurance Company, without following the Traffic Rules. Due to this, the deceased hit the offending vehicle directly, and thereby, he fell down on the road and succumbed to the injuries on the spot. A case in Crime No. 32 of 2012 was registered under Sections 279, 337, and 304(A) of IPC against the driver of the fourth respondent's vehicle, alleging that the accident had occurred only due to rash and negligent driving of the driver of the fourth respondent. The fourth respondent is the owner of the Tempo, which was insured with the fifth respondent/Insurance Company; and therefore, both are jointly and severally liable for paying the compensation. The deceased, Ravisankar, drove the sixth respondent's motorcycle, and the appellant herein is the insurer of the said motor vehicle. Therefore, respondents 4 to 6 are liable to pay compensation to respondents 1 to 3/claimants. Hence, the claimants filed a claim petition, claiming a sum of Rs.10 Lakhs as compensation for the deceased.

4. The case of the appellant/Insurance Company is that though the policy of Tempo is covered by the insurance to the motorcycle and which is subject to various terms and conditions of the policy schedule and the



C.M.A.No.902 of 2018

WEB COPY

accident had occurred due to rash and negligent manner of riding of the rider of the motorcycle, and therefore, he is a tort-feasor. The deceased himself was a tort-feasor is not entitled to claim compensation from the insurer. Since the driver stationed the Tempo in the middle of the road, without observing any traffic Rules, the fifth respondent is liable to pay the compensation for their negligence on the part of the driver of the Tempo, but, not to the person's policy. The compensation claimed also highly excessive and the First Information Report was also registered against the driver of the motorcycle/deceased. Therefore, the Insurance is not covered and the appellant/Insurance Company is not liable to pay the compensation.

5. In order to substantiate the case of the respondents 1 to 3/claimants, on their side, three witnesses were examined as P.W.1 to P.W.3 and 17 documents were marked as Ex.P1 to Ex.P18. On the side of the respondents before the Tribunal, no oral or documentary was let in, but, however, 4 documents were marked as Ex.R1 to Ex.R4.

6. Upon considering the oral and documentary evidence, the Tribunal awarded a sum of Rs.10,40,120/- as compensation to the



C.M.A.No.902 of 2018

WEB COPY

claimants. Challenging the said order, the insurer of the motorcycle bearing Registration No.TN-30-H-7170, has filed the present appeal before this Court.

7. The learned counsel for the appellant/Insurance Company of the motorcycle submitted that the appellant is not liable to pay the compensation much less than 50% of the award passed by the Tribunal. The accident had occurred only due to negligence on the part of the deceased alone, since the deceased is a tort-feasor, the legal heirs are not entitled to claim compensation from the insurer of the motorcycle. The deceased was also equally responsible for the accident and therefore, contributory negligence also be fixed on the deceased. Therefore, the ratio of 50% fixed by the Tribunal is erroneous. There was no contract to cover the risk for the rider of the riding of the motorcycle. But, it required to be covered under Section 147 of the Motor Vehicles Act. The award passed by the Tribunal is erroneous and does not reflect the “just” compensation, and therefore, the award of the Tribunal is liable to be set aside.



C.M.A.No.902 of 2018

WEB COPY

8. The accident is not in dispute and the manner of the accident is also not in dispute, and the only dispute that arises is as to who is liable to pay the compensation and the quantum of compensation. According to the claimants, the deceased was riding the motorcycle bearing Registration No.TN-30-H-7170, since the Tempo bearing Registration No.TN-45-Q-1441 was parked in the middle of the road without following the road traffic Rules, the deceased hit the offending vehicle and fell down from the motorcycle on the road and succumbed to the injuries. Since the rider of the motorcycle died, the driver of the Tempo gave a complaint against the rider of the two-wheeler. If the Tempo was not parked in the middle of the road or otherwise if the driver of the Tempo followed the traffic Rules by indicating signal, the accident could have been avoided, and therefore, the accident had occurred due to the negligence on the part of the driver of the Tempo. Since the driver of the Tempo had also sustained injuries and he filed a claim petition in M.C.O.P.No.443 of 2012 and also received a sum of Rs.20,000/- as compensation for the injuries sustained by him, however, the Tribunal found that the rider of the two-wheeler/deceased also contributed to the negligence, and he could have avoided the accident. Therefore, fixing the liability ratio of 50 : 50 of the contributory negligence on the insurer of the



C.M.A.No.902 of 2018

WEB COPY

Tempo and the insurer of the two wheeler who are liable to pay the compensation, is correct and there is no merit in the appeal filed by the appellant/Insurance Company/ insurer of the two wheeler.

9. As far as the fixing the liability is concerned, since the accident is not disputed and the manner of the accident is also not in dispute, based on the oral and documentary evidence, the Tribunal fixed the ratio of 50 : 50 negligence on the part of the deceased as well as the driver of the Tempo, which is perfectly valid. Since both the vehicles are insured vehicles, the Tribunal fixed the liability on both the Insurance Company and directed them to pay the compensation to the claimants. In view of fixing contributory negligence, the claimants are entitled for 50% of the compensation payable by the Insurance company.

10. As far as the quantum of compensation is concerned, at the time of the accident, the deceased was aged 38 years and he was a self-employee, and earning a sum of Rs.10,000/- per month. Since, no substantive documents are marked to show his monthly earning of Rs.10,000/-, the Tribunal fixed the notional income of Rs.6,500/- per month.



C.M.A.No.902 of 2018

WEB COPY

The number of dependants are three, and hence $1/3^{\text{rd}}$ of the income was deducted towards personal expenses. Considering the age of the deceased who was 38 years at the time of the accident, the Tribunal rightly applied multiplier “15” and calculated a sum of Rs.7,80,120/- towards loss of income of the deceased. This Court finds no error in the above calculation, and the same is hereby confirmed.

11. This Court is of the opinion that the first respondent being the wife of the deceased, the Tribunal awarded a sum of Rs.75,000/- towards “Loss of Consortium” which is excessive and it is hereby reduced to a sum of Rs.40,000/-. The second and third respondents are the children of the deceased, and the Tribunal awarded a sum of Rs.75,000/- each towards “Loss of Love and Affection” and the same is hereby reduced as Rs.50,000/- each. As already compensation has been granted under the head of “Loss of Consortium”, the compensation under the head “ Loss of Estate” would not arise and a sum of Rs.25,000/- awarded under the head of funeral expenses is confirmed.

12. In view of above, except under the heads Loss of Income of the



C.M.A.No.902 of 2018

WEB COPY

deceased and Funeral expenses, the compensation awarded under other heads are reduced and the compensation awarded by the Tribunal is modified under various heads as follows:-

Description	Compensation awarded by the tribunal	Compensation modified by this Court
Loss of income of the deceased (Annual income Rs.52,008 x 15 multiplier)	Rs.7,80,120/-	Rs.7,80,120/-
Funeral Expenses	Rs.25,000/-	Rs.25,000/-
Loss of Consortium to the first respondent/wife of the deceased	Rs.75,000/-	Rs.40,000/-
Loss of love and affection to the second and third respondents/children a sum of Rs.75,000/- each reduced as Rs.50,000/- each	Rs.1,50,000/-	1,00,000/-
Loss of Estate	Rs.10,000/-	...
Total	Rs.10,40,120/-	Rs.9,45,120/-

Accordingly, the compensation of Rs.10,40,120/- awarded by the Tribunal is hereby reduced to Rs.9,45,120/- .

13. Considering the facts and circumstances of the case, this Court as an Appellate Court and fact-finding Court while re-appreciating the material evidence, finds that there is no reason to interfere with the findings of the Tribunal under the other heads.



C.M.A.No.902 of 2018

WEB COPY

14. In view of 50% contributory negligence fixed on the appellant/Insurance Company by the Tribunal which is just and reasonable, and the claimants are entitled for a sum of Rs.4,72,560/- as compensation.

15. In the result, with the above modifications, the Civil Miscellaneous Appeal is partly allowed on the following terms :-

(i) The compensation awarded by the Tribunal at **Rs.10,40,120/-** is hereby reduced to **Rs.9,45,120/-**. Since 50% of the negligence only fixed on the part of the appellant/Insurance Company, the claimants are entitled for a sum of **Rs.4,72,560/-** together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit.

(ii) The appellant / Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks



C.M.A.No.902 of 2018

from the date of receipt of a copy of this Judgment, to the credit of M.C.O.P.No.641 of 2012 on the file of the Motor Accident Claims Tribunal, Salem.

(iii) On such deposit, the respondents 1 to 3 / claimants are permitted to withdraw the award amount now determined by this Court as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn.

(iv) The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the respondents 1 to 3/claimants, as laid down by a Division Bench of this Court in the case of *The Divisional Manager, The Oriental Insurance Company Ltd., Kannur vs Rajesh and others in C.M.A.No.428 of 2016, dated 11.03.2016 reported in 2016 (2) LW 561.*

(v) Since the second and third respondents are



C.M.A.No.902 of 2018

minor, their share shall be deposited in any one of the Nationalized Bank until they attains majority and till then, the wife of the deceased/first respondent shall be permitted to withdraw the interest periodically as the case may be.

(vi) There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is also closed.

14.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Case Citation : Yes/No

klt

To

- 1.The Special District Judge,
Motor Accident Claims Tribunal, Salem.
- 2.The Section Officer,
V.R. Section, High Court of Madras.



WEB COPY



C.M.A.No.902 of 2018

P.VELMURUGAN, J.

klt

Pre-Delivery Judgment in

C.M.A.No.902 of 2018

and

CMP.No.7485 of 2018

14.02.2024