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CMA.No.3394 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

C.M.A.NO.3394 OF 2021 &
CMP.No.19570 of 2021

M/s. United India Insurance
Company Limited,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road, Namakkal,
Pin 637 001.

.. Appellant

/vs/

1. Malarkodi
(R1- dismissed as abated
vide order dt. 24.06.2024)
2. Ramya
3. Vinothkumar
4. VKS Transports,
D.No.234, Salem Road,
Namakkal District.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the award and decree dated 24.03.2021 made in MCOP.No.1365 of 2016 on the file of the Motor Accidents Claims Tribunal (Addl. District Judge), Namakkal.

For Appellant
For Respondents

... Mr.D. Bhaskaran
.... R1-Dismissed as abated
Mr.C.Thangaraju R2 and R3
R4 – No appearance



JUDGMENT

WEB COPY This Civil Miscellaneous Appeal is filed against the against the award and decree dated 24.03.2021 made in MCOP.No.1365 of 2016 on the file of the Motor Accidents Claims Tribunal (Addl. District Judge), Namakkal.

2. The facts leading to filing of this Civil Miscellaneous Appeal is as follows:-

(i) On 15.01.2016 at about 7.30 p.m., near Karuppannasamy Painting Works in eastern side service road of the Salem to Karur Main Road in Namakkal District, the deceased Manickam was riding a TVS two wheeler bearing Regn.No.TN 28 AF 0420, at that time, a trailer Lorry bearing Regn.No.TN 28 AL 2318 was parked in the middle of the road in a negligent manner without any signal, due to which, the two wheeler unexpectedly hit the lorry. On account of the accident, the deceased succumbed to injuries and died on the way to hospital.

(ii) Claiming compensation for the death of the deceased Manickam, the legal heirs of the deceased filed a claim petition in MCOP.No.1365 of 2016 before the Motor Accident Claims Tribunal, Namakkal seeking



compensation of Rs.20 lakhs.

(ii) According to the claimants, the deceased was hale and healthy at the time of accident and during that time, his age was 49 years. The deceased was employed as a welding worker and earned Rs.15,000/- per month. Since the accident had occurred due to the negligent driving of the driver of the lorry belonging to the 4th respondent and insured with the appellant insurance company, the claimants filed claim petition seeking compensation of Rs.20 lakhs from them jointly and severally.

3. Before the claims tribunal, on the side of the claimants, witnesses PW1 and PW2 were examined and exhibits Ex.P.1 to Ex.P.9 were marked. On the side of the respondents, RW1 was examined as witness and Ex.R1 was marked. The tribunal awarded a compensation of Rs.13,11,600/- and directed the owner and insurer of the lorry to pay the compensation jointly and severally.

4. The compensation awarded by the tribunal under various conventional heads are as follows:



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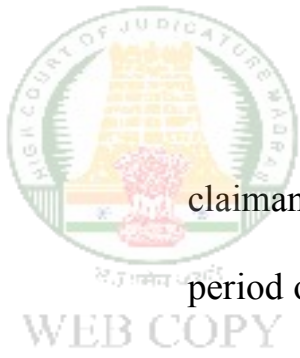
CMA.No.3394 of 2021



<i>S.NO.</i>	<i>Conventional Heads</i>	<i>Amount</i>
1.	Loss of Dependency	Rs.11,61,600/-
2.	Loss of Estate	Rs. 15,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Spousal consortium to the 1st petitioner	Rs. 40,000/-
5.	Parental consortium to the petitioners 2 and 3 at Rs.40,000/- each	Rs. 80,000/-
	Total	Rs.13,11,600/-

together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Out of the award amount, the 1st claimant/wife is entitled to Rs.7,11,600/- and the 2nd and 3rd claimants /children of the deceased are entitled to Rs.3,00,000/- each together with proportionate interest and costs.

5. On such deposit of compensation, the 1st claimant/wife is permitted to withdraw Rs.5,11,600/- and the 2nd and 3rd claimants/children are permitted to withdraw Rs.2,00,000/- each out of the award amount together with interest and costs. The balance amount of Rs.2,00,000/-, Rs.1,00,000/- and Rs.1,00,000/- respectively awarded to the



claimants 1 to 3 are ordered to be deposited in a nationalised Bank for a period of one year.

6. Aggrieved against the quantum of compensation fixed by the tribunal, the appellant/Insurance company has filed the present Civil Miscellaneous Appeal.

7. Learned counsel appearing for the appellant Insurance Company submitted that the tribunal has failed to note that the accident happened only due to own negligence of the deceased. The deceased motorcyclist while driving his vehicle, hit behind the stationed vehicle which was parked in left side of the service road and there was sufficient space on the right side of the parked vehicle. If the deceased maintained a reasonable speed, he would have had control over his vehicle and avoided the accident. Hence the tribunal failed to note that the person who himself caused the incident and out of whose act, loss allegedly occurred to him, was alone responsible for the happening of the accident and the driver of the lorry is not supposed to be a person coming within the ambit of the Act. Therefore, the tribunal ought to have atleast held that the deceased was also equally responsible for the incident and should have apportioned



the liability equally on the deceased or the tribunal should have fixed some liability on the deceased person rather than fixing the entire liability on the vehicle insured with the appellant insurance company.

8. He further submitted that the tribunal had fixed the compensation just and reasonable which need not be interfered with.

9. The learned counsel for the respondents/claimants submitted that admittedly, to prove the negligence of the vehicle insured with the appellant Insurance Company, the respondents had examined PW2 - eye witness, but in order to disprove the negligence, no independent eye witness was examined by the appellant insurance company except RW1- police official and Ex.R1- rough sketch. Ex.R1 is not an exclusive proof to prove the negligence and unless any independent eye witness was examined by the respondent side to prove the negligence and in the absence of any independent witness to prove the negligence of the accident, fixing of negligence on the part of the vehicle insured with the appellant insurance company need not be interfered with.

10. In respect of quantum of the compensation, the accident



occurred during 2016. As per the dictum laid down by the Apex Court in *Sarla Verma's* case, the tribunal arrived at a notional income of Rs.14,000/- and correctly arrived at a compensation is just and reasonable .

Hence he prayed for dismissal of this appeal.

11. Heard both sides and perused the entire materials available on record.

12. Admittedly, the deceased while riding his motor cycle dashed his vehicle against the rear side of the insured vehicle which was parked in the National Highways. The vehicle has to be parked only in the parking area, but the driver of the lorry has parked his vehicle in the service road and the same is contrary to the National Highways Rules. In the present case, the vehicle was parked in the middle of the service road. In order to prove negligence on the part of the offending vehicle, PW2 was examined before the tribunal, whereas, in order to disprove the same, no independent eye witness was examined by the appellant insurance company. Therefore, the tribunal has rightly fixed the liability of negligence on the part of the driver of the lorry. Hence, the liability fastened by the trial court on the Insurance company need not be



CMA.No.3394 of 2021

interfered with. In respect of quantum of compensation, the tribunal, considering the age of the deceased and the accident of the year 2016, by following the decision of the Hon'ble Apex Court rendered in *Neeta Vs. The Divisional Manager, MSRTC, Kolhapur (2015 (1) TNMAC 161 SC)* fixed Rs.12000/- as notional income of the deceased, which according to this court is fair and reasonable. The amount of compensation awarded by the tribunal under the other heads also appears to be reasonable, hence the same need not be interfered with. In view of the above discussions, the Civil Miscellaneous Appeal deserves to be dismissed and accordingly, it is hereby dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

09.12.2024

msr

Index:yes/no

Internet:

To

The Motor Accidents Claims Tribunal
(Addl. District Judge), Namakkal.



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CMA.No.3394 of 2021

M. DHANDAPANI, J.

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