



C.M.A.No.2647 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.2647 of 2022
and
C.M.P.No.20587 of 2022

The District Collector,
Cuddalore,
Cuddalore - 607 001.

... Appellant

Vs.

1. P.Vani
W/o Late. Penta Vasu
2. Penta Chandani (Minor)
D/o late Penta Vasu
3. Penta Balavardhan (Minor)
S/o Late. Penta Vasu.
4. P.Parvati,
W/o Penta Ramudu
5. Penta Ramadu
S/o Late. Gaddayya
(2nd and 3rd minor respondents
represented by their mother and
next friend, 1st respondent)

... Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 22.03.2022 made in M.C.O.P.No.5726/2018 on the file of Motor Accident Claims Tribunal/Chief Small Causes Court, Chennai.

For Appellant : Mr.T.Arunkumar,
Additional Government Pleader

For Respondents : Mr.M.Murali
for R1 to R5

JUDGMENT

(Judgment of the Court was delivered by J. Nisha Banu, J)

This Civil Miscellaneous Appeal has been filed as against the judgment and decree dated 22.03.2022 passed in M.C.O.P.No.5726/2018 on the file of Motor Accident Claims Tribunal, The Chief Judge, Court of Small Causes, Chennai.

2. The respondent therein preferred this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act. For the sake of convenience, the parties are hereinafter referred to as per their array in the Original Petition.

3. The case of the petitioner is that the 1st petitioner is the wife, the 2nd and 3rd petitioners are children, the 4th and 5th petitioners are parents of Penta Vasu. On 31.10.2017 at about 18.30 hours, while Penta Vasu was trying to cross the road from east to west direction, at the



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junction of VGP II Main Road, ECR Uthandi, the respondent Car bearing Registration No.TN-31-AG-7777 came from north to south direction, driven in a rash and negligent manner dashed against Penta Vasu. Due to the impact, the deceased Penta Vasu sustained fatal injuries and died in the hospital on 04.11.2017, despite treatment. The driver of the respondent car was solely responsible for the accident. At the time of accident, the deceased was 27 years old and was working as a mason in Vijay Builders, Chennai and was earning a sum of Rs.18,000/- per month. Hence, the petitioners filed a Claim Petition seeking compensation of Rs.45,00,000/-.

4. The respondent filed counter denying the manner of the accident. According to the respondent, the driver of the respondent car, though drove the vehicle carefully and slowly, at that time, the deceased crossed the road suddenly and the driver of the respondent vehicle applied brake to avoid the accident. The deceased fell down and sustained multiple injuries and the accident happened only due to the mistake and carelessness of the deceased. Hence, the respondent is not responsible for the accident. Accordingly, the respondent prayed to dismiss the O.P.

5. At trial, the 1st petitioner was examined as P.W.1 and one



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Chockalingam, ocular witness of the accident was examined as P.W.2 and Exs.P1 to P9 were marked. On the side of the respondent, driver of the offending vehicle was examined as RW1 and Ex.R1 copy of the driving licence of RW1 was marked.

6. The Tribunal, based on the First Information Report and the deposition of P.W.2(ocular witness), came to the conclusion that the accident occurred due to rash and negligent driving of the 1st respondent driver.

7. With regard to the quantum, the Tribunal took a sum of Rs.10,000/- per month as notional income of the deceased. At the time of death, the age of the deceased was 27 years and hence, the Tribunal, applied the multiplier 17 and also added 40% towards future prospects. Further, as the deceased died leaving behind his wife, two minor children and parents, 1/4th was deducted towards his personal expenses and also deducted 10% towards contributory negligence of the deceased. Accordingly, the Tribunal arrived a sum of Rs.21,27,800/- as compensation to the petitioners with interest at the rate of 7.5% per annum from the date of filing the original petition till the date of realisation excluding the default period, if any, with proportional cost.



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8. Aggrieved by the award passed by the Tribunal, the respondent therein has filed the present Civil Miscellaneous Appeal.

9. Learned counsel for the appellant submitted that the accident occurred only due to the mistake of the deceased. The deceased suddenly crossed the road and thereby invited the accident. The appellant car driver was no way responsible for the accident. Hence, the appellant is not liable to pay the compensation to the petitioners. Learned counsel further submitted that the Tribunal has taken a sum of Rs.10,000/- as notional income of the deceased which is on the higher side. Hence, he would pray to allow the Appeal.

10. Learned counsel for the respondents would state though the deceased was earning Rs.18,000/- per month, the Tribunal had taken only the notional income of Rs.10,000/- per month. Learned counsel would further state that the deceased was not at all responsible for the accident however, the Tribunal, stating that since the victim suddenly crossed the road, he was also responsible for the accident and fixed 10% contributory negligence on the victim.

11. This Court, perused the award of the Tribunal and the typed set of papers filed along with Appeal.



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12. Admittedly, the F.I.R. was registered against R.W.1 and after investigation, the Police filed the final report against him under section 279 and 304-A of I.P.C. On the side of the petitioner, one Chockalingam was examined as ocular witness. The evidence of Chockalingam/P.W.2 coupled with Exs.P1 and P2, F.I.R. and charge sheet prima facie establish that the accident occurred due to rash and negligent driving of the first respondent driver. On the side of the respondent, R.W1-R.Iyyappan who drove the first respondent car at the time of accident was examined. The accident happened at ECR Road, VGP II Main Road junction. RW1 admitted that there was a zebra crossing where the accident occurred. Based on the F.I.R., final report and the evidence of P.W.1, the Tribunal concluded that the offending vehicle which came in high speed, even after application of brake, hit the victim fatally is substantially responsible for the accident, however, the Tribunal also fixed 10% contributory negligence on the victim. The said finding of the Tribunal, in the opinion of this Court, does not warrant any interference.

13. As regards the quantum is concerned, according to the claimants, the deceased was working as a mason and was earning Rs.18,000/- per month but they did not produce any document to



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substantiate the same. The accident occurred in the year 2017. The deceased passed away leaving his wife, two minor children and parents. Hence, he would have earned at least not less than Rs.10,000/- per month at the time of accident. The Tribunal had reasonably taken the notional income of the deceased as Rs.10,000/- per month which cannot be interfered.

14. Insofar as multiplier applied and future prospects are concerned, the Tribunal rightly applied the multiplier 17 as per the decision reported in 2009(2) TNMAC 1 (SC) (*Sarala Verma and others vs. Delhi Transport Corporation and another*), based on the age of the deceased and added 40% towards future prospects as per the decision of the Hon'ble Supreme Court reported in 2017(2) TNMAC 609 (SC) (*National Insurance Company Limited vs. Pranay Sethi and others*) and arrived at the compensation at Rs.21,27,800/-. This Court does not find any irregularity or infirmity in the award passed by the Tribunal. Therefore, this Court is not inclined to interfere with the same.

15. In the result, the Civil Miscellaneous Appeal is dismissed. The award of compensation of Rs.21,27,800/- passed by the learned Chief



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Judge, Court of Small Causes, Chennai, made in M.C.O.P.No.5726 of 2018 dated 22.03.2022 is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and cost, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The 1st, 4th and 5th claimants are permitted to withdraw the entire amount of their shares along with interest and costs. Insofar as the share amount of the minor claimants/2nd and 3rd claimants are concerned, the same shall be deposited in a Nationalized Bank till they attain majority and the 1st claimant, being the mother /guardian is permitted to withdraw the periodical interest once in three months directly from the bank for the maintenance of the minors. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs. Consequently, connected Miscellaneous Petition is closed.

(J.N.B, J.) (R.S.V., J.)
17.12.2024

Index:Yes/No
vsi

To

The Motor Accident Claims Tribunal/



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Chief Small Causes Court, Chennai.

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J. NISHA BANU, J.
and
R. SAKTHIVEL, J.



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vsi

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