



C.M.A.No.133 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4/11/2024

C O R A M

THE HONOURABLE Mr.JUSTICE **M.DHANDAPANI**

Civil Miscellaneous Appeal No.133 of 2019

a n d

C.M.P.No.586 of 2019

The New India Assurance Co. Ltd
1350 Amman Complex
EVN Road
Erode 638 011.

...

Appellant

Vs

1. Thuyamani
2. Prabhu
3. G. Ravikumar
4. P. Dhanalakshmi

...

Respondents

For appellant
For respondents

...

Mr.M.Krishnamoorthy
Mr.S.Kaithamalai Kumaran
for R.2
R.R.3 and 4 – set ex parte

J U D G M E N T

Questioning the award dated 19/4/2017 passed in M.C.O.P.No.335 of 2009, by the Motor Accident Claims Tribunal, Additional Sub-Judge, Tirupur, New India Assurance Company Ltd./appellant has filed the instant Civil Miscellaneous Appeal.



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2. The facts in brief are as follows:-

On 24/10/2008, at about 11.00 a.m., when the deceased/father and mother of the first and second respondents were proceeding towards east on the left side of Tirupur – Uthukuli road, near Primiear Apparels Institute, S. Periyapalayam, in a Scooter, bearing Registration No.TN-39-D-2973, third respondent, drove a lorry bearing Registration No.TN-33-AE-8602 towards east with high speed in a rash and negligent manner, dashed on the scooter. As a result, wife of the rider, Chellammal, who was a pillion rider, died on the spot. After first aid at Revathi Medical Centre, Tirupur, the deceased father was admitted at PSG Hospital, Coimbatore, where he took intensive treatment from 24/10/2008 to 25/11/2008. Thereafter, at KMCH Coimbatore from 1/12/2008 to 4/1/2009 and later, he died on 27/3/2012.

3. At the time of accident, the deceased father was 58 years old and filed a claim petition, in M.C.O.P.No.335 of 2009, on the file of the Motor Accident Claims Tribunal, Tirupur, claiming a sum of Rs.24,00,000/- as compensation.



4. After analyzing the oral and documentary evidences, the trial Court has awarded a sum of Rs.17,89,110/- as compensation payable jointly by the Insurance Company and third and fourth respondents.

5. Being aggrieved, appellant Insurance Company has filed the instant Civil Miscellaneous Appeal.

6. Heard Mr.M.Krishnamurthy, learned counsel for the appellant and Mr.S.Kaithamalai Kumaran, learned counsel for the second respondent.

7. The learned counsel appearing for the appellant submitted that last date of taking treatment by the deceased as in-patient is 4/1/2009. Thereafter, he died on 27/3/2012, i.e., after three years. No document is filed before the trial Court to prove the injuries sustained by the deceased. In the absence of any such material and evidence, the Claims Tribunal cannot award excessive compensation of Rs.8,27,928/- under the head loss of dependency by applying excessive multiplier by fixing the monthly income at Rs.10,000/- and adding 15% towards future prospects.



8. Per contra, learned counsel for the respondents 1 and 2 submitted

that at the time of accident, the deceased father was 58 years old, hale and healthy. If no such incident had happened, he would have lived upto 75 years. The accident had occurred only due to the rash and negligent driving of the third respondent, who was the driver of the lorry bearing Registration No.TN-33-AE-8602 and since the fourth respondent and appellant are the owner and insurer, respectively, they are jointly and severally liable to pay the compensation to the respondents 1 and 2.

9. Perused the materials available on record.

10. It is an admitted fact that the deceased was in patient in the hospital from 1/12/2008 to 4/1/2009. For the injuries sustained, the claimants had not filed any medical report to prove that the deceased was died due to the alleged accident on 24/10/2008. In the absence of any such document, the trial Court came to the conclusion that the deceased was died due to the accident and the same is not sustainable.

11. Without any documentary proof, trial Court had awarded loss of dependency to the tune of Rs.8,27,928/- by taking the monthly income of the



deceased at Rs.10,000/- p.m., and also adding 10% towards future prospects, which is liable to be interfered with. The trial Court had awarded Rs.41,000/- towards loss of earning for 44 months. Since the said amount is on the lower side, this Court enhance the same by awarding a lumpsum of Rs.1 lakh. Taking into consideration the period of treatment undergone by the deceased, the attender charge is enhanced to Rs.50,000/-. Likewise, the transport to hospital is also enhanced to Rs.50,000/-. Thus, the total compensation of Rs.17,89,110.50 awarded by the Tribunal is reduced to Rs.10,04,182/-, as under:-

Heads	Amount awarded by the Tribunal (in Rs.)	Modified award amount (in Rs.)
Compensation after multiplier 9 is applied	8,27,928.00	
Loss of earning capacity for 41 months	41,000.00	1,00,000/-
Medical bills	7,77,182.50	7,77,182.50
Pain and suffering and mental agony	50,000.00	50,000/-
Attender fee per month (1000 x 41 months)	41,000.00	50,000/-
Nutrition	25,000.00	25,000/-
Transport to hospital	25,000.00	50,000/-
Damage to two wheeler	2,000.00	2,000/-
Total	17,89,110.50	10,04,182

12. The amount of compensation awarded by the Tribunal reduced to



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Rs.10,04,182/- as stated above.

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13. In the result, order of the Tribunal in M.C.O.P.No.335 of 2009 dated 19/4/2017 is modified and this Civil Miscellaneous Appeal is partly allowed.

14. The compensation amount of Rs.17,89,110/- is reduced to Rs.10,04,182/- (Rupees Ten lakhs four thousand one hundred and eighty two only) with interest at the rate of 7.5% p.a., from the date of petition till the date of realization. The appellant Insurance Company is directed to deposit the reduced amount as ordered by this Court with interest, after deducting the amount if any already deposited within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the same on making proper application before the Tribunal. No costs.

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Neutral Citation: Yes/No

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