



C.M.A.(MD).No.1368 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.12.2023

PRONOUNCED ON : 23.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1368 of 2012

The Oriental Insurance Company Limited,
Rep. By its Divisional Manager,
No.4, Barathidasan Road,
Trichirappalli.

... Appellant

Vs.

1.Mohammed Rafeek
2.Fathima Beevi
3.Susila Bai
4.Buvaneswari
(3rd and 4th respondents remained exparte
before the lower Court)
5.National Insurance Company Limited,
Rep. By its Divisional Manager,
Manojiappa Street,
Thanjavur.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award of Rs.7,65,000/- (Rupees Seven Lakhs Sixty Five Thousand only) passed in M.C.O.P.No.354 of



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2010 dated 29.06.2012, on the file of the Motor Accidents Claims Tribunal Cum Additional Sub Judge, Kumbakonam.

For Appellant	: Mr.K.Balasubramanian
For R1 & R2	: Mr.V.Chandrasekar
For R3	: Mr.R.Sundar
For R5	: Mr.R.Sakthivel
For R4	: Dismissed

JUDGMENT

This Civil Miscellaneous Appeal has been directed as against the award on certain counts passed by the learned Motor Accident Claims Tribunal cum Additional Sub Judge, at Kumbakonam, in M.C.O.P.No. 354 of 2010 dated 29.06.2012 by the appellant/second respondent/insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.354 of 2010.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is a fatal case and the petitioners are the parents of the deceased. The petitioners' son Mohamed Faizal was pursuing second year



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B.E., at M.A.R. Engineering College, Viralimalai, Pudukottai District at the time of accident. On 13.03.2010, the petitioners' son having attended the special class at College, came from the college in a motorcycle with another classmate Ahamed Ibrahim registered in the name of the third respondent. The deceased Mohamed Faizal drove the motorcycle with Ahamed Ibrahim and Anand Babu as pillion rider at about 12.45 p.m., from the college. When they were crossing Alandur bus stop at about 01.15 p.m., while overtaking a lorry, an omnibus belonging to the first respondent driven by its driver came from behind and without allowing the motorcycle to overtake the lorry to go to the left and without blowing the horn dashed against the motorcycle of the third respondent. The third respondent's son fortunately was thrown out of the motorcycle and landed on the other side of the divider and escaped with injuries. While rider and another pillion rider fell on the road on the left side of the divider, as the result of which, the front wheel of the first respondent's bus ran over the rider Mohamed Faisal and he died on the spot with crushed head injuries. The other pillion rider Ahamed Ibrahim also sustained multiple injuries and died on the way. The complaint was given by Anand Babu and Manikandam Police had registered the case against



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the bus driver. Seeking a compensation of Rs.15,00,000/-, the petitioners, that is, the parents of the deceased have filed the claim petition.

4.The first respondent is the owner of the vehicle bearing registration No.TN-04-L-2579 and the second respondent is the insurance company with which the said vehicle has been insured. The third respondent is the owner of the vehicle bearing registration No.PY-01-AZ-6942 Pulsar motorcycle and the fourth respondent is the insurance company with which the said Pulsar was insured. The second respondent insurance company filed a counter refuting each and every allegations set forth in the claim petition.

5.The learned Tribunal had framed two issues. Two witnesses P.W.1 and P.W.2 were examined on the side of the petitioners and six documents Ex.P1 to Ex.P6 were marked and on the side of the respondents, one witness R.W.1 was examined and one document Ex.R1 was marked. The respondents 1 & 3 were called absent and set exparte. On the basis of the oral and documentary evidence and arguments put forth by the respective parties, the learned Tribunal has proceeded to



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conclude that the accident had happened only due to the rash and negligent driving of the first respondent's driver who drove the bus bearing registration No.TN-04-L-2579. On the basis of post mortem certificate marked as Ex.P2, the age of the deceased was fixed as 20 years. Though it was contended by the learned counsel for the petitioners that the deceased has wide possibility of earning more than Rs.40,000/- in future considering that he was only a student at the time of accident, the learned Tribunal fixed a notional income of Rs.8,000/- per month and on the basis of law laid down in the case of ***Sarala Varma and others v. Delhi Transport Corporation and others*** reported in ***AIR 2009 (SCC) 3104***, $\frac{1}{2}^{\text{th}}$ of the monthly income was deducted towards the personal expenses of the deceased, since he was a bachelor and fixed an amount of Rs.4,000/- as contribution towards family. Thereafter, following the judgment passed by the Hon'ble Supreme Court in ***Sarala Varma*** case, the age of the mother of the deceased was considered for the purpose of relevant multiplier. Since the mother's age was 38 years, the relevant multiplier '15' was taken. Hence, the compensation for the head loss of income is calculated as Rs.7,20,000/-(Rs.4,000x12x15). The learned Tribunal passed the award under the following heads:-



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Head	Compensation awarded
(I) Loss of dependency:	Rs.7,20,000/-
(ii) Loss of love and affection for the petitioners:	Rs.40,000/- (Rs.20,000/- each)
(iii) Funeral Expenses:	Rs.5,000/-
Total compensation awarded:	Rs.7,65,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6. Challenging the same, the appellant/second respondent insurance company has filed this Civil Miscellaneous Appeal.

7. The learned counsel for the appellant/second respondent vehemently submitted that the learned Tribunal failed to note the damages caused to both the vehicles in the accident and that the accident had occurred due to negligence of both the vehicles. Hence, the learned Tribunal ought to have fixed contributory negligence on the part of both the drivers and thereby, deduction to the extent of the guilt contributory negligence ought to have been fixed on the rider of the motorcycle also and pressed for allowing the appeal seeking contributory negligence on the rider of the two wheeler I.e. the deceased, son of the petitioners.



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8.However, it was brought to the notice of this Court that in connected two other M.C.O.Ps., filed by the deceased pillion rider and injured pillion rider, the second respondent insurance company had already paid the award amount, finding no infirmity in the finding of the learned Tribunal.

9.The appellant/insurance company is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw the award amount with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. The claimants are not entitled for interest for the default period, if there is any.

10.In view of the same, I am not inclined to interfere with the award passed by the learned Tribunal. Accordingly, the Civil



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Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

23.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

1.The Motor Accidents Claims Tribunal,
(Additional District Judge), Pudukkottai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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