



C.M.A.(MD)No.441 of 2011

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Dated: 23.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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- 1.Senthooran (died)
- 2.Lakshmi
- 3.Murugeswari
- 4.Arumugam
- 5.Sakthivel
- 6.Saravanan
- 7.Palani

(Appellants 2 to 4 recorded as Lrs of deceased first appellant and A5 to A7 brought on record as the Lrs of deceased first appellant, vide Court order dated 29.07.2016.)

... Appellants/ Petitioners

Vs.

- 1.The Managing Director,
Tamilnadu State Corporation Ltd.,
Karaikudi, Sivagangai District.
- 2.Palpandian
- 3.The Divisional Manager,
Oriental Insurance Company Ltd.,



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108, T.P.K.Road, Madurai.

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4.Pethapandi

... Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award dated 26.10.2007 made in M.C.O.P.No.26 of 2005 on the file of the Motor Accident Claims Tribunal – Principal District Judge, Ramanathapuram.

For Appellants : Mr.S.Ramesh
For R1 : M.Prakash
For R3 : Mr.C.Jawahar Ravindran
For R2 & R4 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.26 of 2005 on the file of the Motor Accident Claims Tribunal – Principal District Judge, Ramanathapuram, wherein the appellants / petitioners herein have filed the claim petition for a sum of Rs.6,70,000/- and restricted for a sum of Rs.4,00,000/-. The Tribunal has awarded a sum of Rs.4,00,000/- along with interest @ 7.5% per annum from the date of filing of petition. Out of the award of Rs.4,00,000/-, the Tribunal fixed liability of the first respondent at 25% (ie.Rs.1,00,000/-) and the third respondent at 75% (ie. Rs.3,00,000/-).



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2. Being aggrieved by the above said order of the Tribunal the petitioners have filed this Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the petition averments are as follows:

On 22.05.2004 at about 5.20 p.m., when the deceased – Kathirvel and others were travelling in the second respondent's Jeep bearing Registration No.M.T.R-6253 from Maranthai to Saveriarpattinam, the driver of the Jeep drove the vehicle in a rash and negligent manner, at that time, a bus bearing Registration No. TN-63-N-0422 belonged to the first respondent was also proceeding towards opposite side in a rash and negligent manner and dashed against the Jeep. Due to the accident, the deceased – Kathirvel and others sustained grievous injuries and thereafter, the said Kathirvel died on 03.06.2004. The accident took place due to the negligence on the part of the drivers of the first respondent and the second



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respondent. At the time of accident, the deceased was aged about 22 years and was working as Electrician and Motor mechanic and was earning Rs.5,000/- per month. Hence the petitioners, who are the legal heirs of the deceased, have filed the claim petitioner for claiming compensation for a sum of Rs.6,70,000/- and restricted for a sum of Rs.4,00,000/-.

5. The brief facts of counter filed by the third respondent are as follows:

The Jeep bearing Registration No.M.T.R-6253 is a private vehicle and insured as Act policy and the policy does not cover the risk of occupants of the vehicle. Therefore, the Insurance Company is not liable to pay compensation to the petitioners. Therefore, this respondent is not liable to pay compensation to the petitioners.

6. The respondents 1, 2 and 4 remained exparte before the Tribunal

7. Inorder to prove the case of the petitioners, the first petitioner examined himself as P.W.1 and one Karuppaiah was examined as P.W.2



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and 7 documents were marked as Exs.P.1 to Ex.P.7 and on the side of the respondents, one witness was examined as R.W.1 and one document was marked as Ex.R1.

8. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.4,00,000/- towards compensation with interest of 7.5 % by fixing 25% liability for the first respondent and 75% liability for the fourth respondent.

9. As against the award passed by the Tribunal the claimants have preferred this appeal for enhancing the compensation amount.

10. The learned counsel appearing for appellants/claimants would contend that the accident took place due to the negligence on the part of the driver of the bus as well as the driver of the jeep. But, the Tribunal has fixed the liability as against the first respondent at 25% and 75% against the fourth respondent and exonerated the insurance company on the ground that there is violation of the police condition. In fact, there is no proof to show that the vehicle was sold to the fourth respondent and



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the R.C. Book on the date of accident was stood in the name of the second respondent and the same was insured with the third respondent and therefore, the third respondent is liable to pay compensation. But, the Tribunal without considering the same, exonerated the insurance company -third respondent from the liability. Further the Tribunal has awarded only a meagre amount and the Tribunal has only taken by the income of the deceased at Rs.4,200/- pm., instead of Rs.5,000/- per month and the Tribunal failed to award future prospects, thereby, the award passed by the Tribunal is liable to be set aside in respect of the quantum of the award and exonerating the Insurance Company.

11. The learned counsel appearing for the first respondent would contend that the Tribunal has fixed the liability as against the first respondent at 25% and 75% as against the fourth respondent, who is the owner of the vehicle – subsequent purchaser of the vehicle. The petitioners themselves restricted in the claim petition only at Rs.4,00,000/-, thereby, the Tribunal has awarded a fair compensation of Rs.4,00,000/- as claimed by the petitioners. Therefore, this appeal is liable to be dismissed.



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12. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i)whether the appeal is liable to be allowed or not?

13. According to the appellants, the accident took place due to the negligence on the part of the driver of the jeep as well as the driver of the bus. The Tribunal has fixed the liability as against the first respondent at 25% and 75% as against the fourth respondent. Further, the Tribunal has exonerated the insurance company from the liability on the ground that there is a violation of policy condition. In this context, the Tribunal in its order held that the vehicle was sold by the second respondent to the fourth respondent. However, R.C. Book was not transferred in the name of the fourth respondent and on the date of accident R.C. Book was in the name of the second respondent. It is well settled law that unless R.C book was transferred in the name of the purchaser, it is the presumption that the previous owner is the owner of the vehicle. Therefore, the findings of the Tribunal that the vehicle was sold by the second respondent to the fourth respondent and thereby the fourth respondent is liable to pay compensation



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is not acceptable. There is no dispute that the vehicle was insured with the third respondent on the date of accident, therefore, the third respondent is liable to pay compensation to the petitioners/ appellants.

14. Even if any violation of policy, the Insurance Company has to satisfy the award to the petitioners and thereafter they can recover the same from the owner of the vehicle. Therefore, the order passed by the Tribunal with regard to liability of insurance company is liable to be set aside. The Tribunal after took into the consideration of the evidences adduced on either side fixed the liability on both vehicles as the same is proper and in order. There by, this Court also fixed the liability of the first respondent at 25% and the third respondent at 75%.

15. As far as the quantum is concerned, the petitioners / appellants themselves restricted the award amount of Rs.4,00,000/-, even in the appeal they are restricted their claim only for Rs.5,00,000/-. In this contest, the learned counsel appearing for the petitioners / appellants has relied on the judgment of the Hon'ble Supreme Court in the case of **Meena Devi V. Nunu Chand Mahto @ Nemchand Mahto and others** reported in



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2022-LiveLaw(SC)-841, by contending that even if the petitioners restrict the award amount, this Court can enhance the amount for just and fair compensation. In view of the said judgment in this case, this Court can enhance the amount even the petitioners restricted the award to Rs.5,00,000/- for just and fair compensation.

16. According to the petitioners /appellants, the deceased was aged about 22 years and the same was not disputed. In the post mortem certificate - Ex.P2, the age of the deceased is mentioned as 22 years. According to the petitioners, the deceased was earning Rs.5,000/- per month, but, no proof to prove the income of the deceased. The Tribunal fixed Rs.4,200/- as monthly income of the deceased, however, failed to consider the future prospects. Now, this Court considering the age of the deceased, the income of the deceased is fixed at Rs.5,000/- per month, including the future prospects. Since the deceased was a bachelor, 50% of the income (Rs.2,500) to be deducted as personal expenses. The Tribunal has applied multiplier only '17' instead of '18'. Considering the age of the deceased (22 years), multiplier 18 is adopted. Thereby, the award amount of Rs.5,40,000/- (Rs.2,500/- X 12 X 18) is fixed towards loss of income.



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Apart from that the petitioners / appellants are entitled for a sum of Rs. 18,000/- towards funeral expenses and also Rs.18,000/- towards loss of estate. In total, the petitioners / appellants are entitled to Rs.5,76,000/-.

The petitioners / appellants are entitled for compensation as follows:

1.	Loss of income	Rs. 5,40,000/-
2.	Funeral Expenses	Rs. 18,000/-
3.	Loss of estate	Rs. 18,000/-
	Total	Rs.5,76,000/-

17. In fine, the petitioners / appellants are entitled to a sum of Rs.5,76,000/- towards compensation with interest at the rate of 7.5% pa. from the date of claim petition till the date of realization. The petitioners/ appellants are entitled for the award amount equally with proportionate interest and costs. The fourth respondent is exonerated from the liability.

18. In the result this Civil Miscellaneous Appeal is allowed and the order passed by the Tribunal in M.C.O.P.No.26 of 2005 is modified to the effect that the petitioners / appellants are entitled for a sum of Rs. 5,76,000/- as compensation with interest at the rate of 7.5% pa. The first respondent /Tamil Nadu State Corporation is directed to deposit 25% (ie.Rs.1,44,000/-) of the award amount with interest and costs, and the



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third respondent /Oriental Insurance Company is directed to deposit 75% (ie.Rs.4,32,000/-) of the award amount with interest and costs, from the date of claim petition till the date of realization, within period of two months from the date of this judgment, after deducting the amount already deposited, if any. On such deposit being made, the petitioners / appellants are permitted to withdraw their share amount together with proportionate interest and costs by filing application before the Tribunal. The claimants / appellants are directed to pay the balance court fee for the modified enhanced award amount. No costs.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal –
Principal District Judge,
Ramanathapuram. .
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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