



C.M.A.(MD).No.209 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2024

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THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.209 of 2021
and C.M.P.(MD).No.1822 of 2021

IFFCO TOKIO General Insurance Company Ltd.,
Through its Branch Manager, Madurai.
82, Preetham Plaza, Ground Floor and First Floor,
Chandra Kandhi Nagar,
Ponmeni, Madurai - 62 ... Appellant/Respondent No.2.

Vs.

1.P.Dharmar
2.D.Arun Dharmar
3.D.Anand ... Respondents 1 to 3/Petitioners
4.P.Thiagaraja Pandian ... Respondent No.4/Respondent No.1.

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 14.10.2020 passed in M.C.O.P.No.1902 of 2018, on the file of the Motor Accident Claims Tribunal / Special District Court to deal with Motor Accident Cases of Madurai.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.C.Vakeeswaran for R1 to R3
R4 – No Appearance



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JUDGMENT

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This appeal has been filed to set aside the judgment and decree dated 14.10.2020 passed in M.C.O.P.No.1902 of 2018, on the file of the Motor Accident Claims Tribunal / Special District Court to deal with Motor Accident Cases of Madurai.

2.The facts in brief:

On 28.11.2018 at about 11.45 a.m. the deceased and her husband along with one relative went to Nagamalai Pudukottai to attend a function and thereafter, returned to home in Usilampatti by travelling a Maruthi car bearing registration No.TN 72 AB 4233. The car was driven by the husband of the deceased. At that time, near the place of occurrence one Ertica car bearing registration No.TN 58 AT 2279 was driven by its driver in rash and negligent manner and hit the Maruthi car, in which, the deceased was travelling. Out of which, all the occupants sustained grievous injuries. The deceased sustained more serious injuries taken to the Government Hospital, Madurai. But on the way to the hospital, she died.



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3.At the time of occurrence, she was aged about 60 and retired employee of the Tamil Nadu Educational Department. She retired from the post of Senior Grade Teacher in Government Higher Secondary School, Reddiyapatti, Tirunelveli District. She was drawing a sum of Rs.20,000/- as pension. Claiming compensation amount of Rs.15 lakhs this claim petition has been filed.

4.That was resisted by the appellant insurance company stating that there was a composite negligence on the part of the driver of the Maruthi car also, which had turned turtle. So the owner and the insurer of the Maruthi car are necessary parties. Apart from that other customary denials were also made.

5.At the conclusion of the enquiry, the tribunal recorded a finding that the occurrence took place because of the rash and negligent driving on the part of the first respondent in the petition namely the driver of the Ertigo car bearing registration No.TN 58 AT 2779 and fixed the responsibility upon the insurer and insured.



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6.Regarding the compensation, the age of the deceased was fixed at 64 on the basis of the entries made in the pension book. The pension amount was fixed at Rs.22,076/- as per Ex.P13. 1/3rd was deducted. Multiplier 7 was adopted and arrived at the following amount.

<i>Sl. No.</i>	<i>Nature of Head</i>	<i>Award (Rs.)</i>
1.	<i>Loss of Dependency</i>	<i>12,32,312</i>
2.	<i>Loss of Consortium for 1st petitioner</i>	<i>40,000</i>
3.	<i>Funeral Expenses</i>	<i>15,000</i>
4.	<i>Transport Charges</i>	<i>15,000</i>
	<i>Total</i>	<i>13,06,312</i>

7.According to the learned counsel for the appellant, since the deceased was drawing the monthly pension of Rs.22,076/-, that amount must be deducted towards loss of income. Per contra, it is the contention on the part of the respondent that no such deduction is permissible under law. On either side judgments were cited to support their contention.

8.They relied upon the Judgment of the Honourable Supreme Court in the case of ***Sebastiani Lakra and Ors. Vs. National Insurance***



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Company Ltd., and Ors. in Civil Appeal Nos.10588-89 of 2018 dated 12.10.2018, wherein, our Honourable Apex Court has made discussion about the family pension and the compensation to be awarded in the Motor Accident Claim cases and has concluded that the compensation amount received by the family members cannot be construed as pecuniary advantage and pensions are granted to the retired employees on account of their long service and the contribution made by them towards the claim. So deducting the pension amount is not permissible under law.

9.This is followed in number of subsequent judgments, including the Judgment of the co-ordinate Bench in the case of ***The Manager, Cholamandalam MS General Insurance Company Limited, Door No. 46, Pudhupettai Main Road, Opposite to IDBI Bank, Thirupathur, Vellore District Vs. Vijayanthimala and others*** made in C.M.A.No.162 of 2022, dated 15.07.2023 and in the case of ***R.Jeyalakshmi and another Vs. Srinivasan and another*** made in C.M.A.(MD).No.1201 of 2014, dated 16.02.2022.



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10.In view of the above said principle of law, I am of the considered view that the judgments cited by the appellant has no relevancy and cannot be followed in view of the settled position of law as noted above.

11.Regarding the other heads, the amounts have been reasonably fixed which was not reasonably disputed by the appellant. So the appeal deserves to be dismissed.

12.Accordingly, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.07.2024

Index : Yes / No
Internet : Yes / No
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To

1.The District Judge, Motor Accident Claims Tribunal / Special District Court to deal with Motor Accident Cases of Madurai.

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

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G.ILANGO VAN,J.

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