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CMA.(MD)No.346 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

CMA (MD) No. 346 of 2021

and

CMP (MD) No. 2851 of 2021

The Branch Manager,
The New India Assurance Company Limited,
Palamoor Road,
Opposite Anna Stadium,
Nagercoil. : Appellant/2nd Respondent

Vs.

1.Mariamerkala
2.Xavierraj
3.Aneesraj : R1 to R3/Petitioners
4.Padmanabadoss : 4th Respondent/R1
(R4 is not a necessary party
for adjudication : Notice
dispensed with)

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment, dated 29/08/2019 made in MCOP No.1132 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tirunelveli.

For Appellant : Mr.J.S.Murali
For R1 to R3 : Mr.T.Lenin Kumar
For 4th Respondent : Dispensed with



JUDGMENT

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This Appeal is filed seeking to set aside the decree and judgment, dated 29/08/2019 made in MCOP No.1132 of 2015 by the Motor Accident Claims Tribunal (Special Sub Judge), Tirunelveli.

2.The facts in brief:-

On 21/02/2015 at about 08.40 pm, when the deceased namely Abisraj was driving his mother cycle bearing Engine No.DKZCFK92015 on the Thingal Nagar to Kulachal main road from east to west direction, at that time, the first respondent vehicle bearing registration No.TN-74-A-7306 was driven by its driver in a rash and negligent manner on the south-north direction entered into the main road and hit the motor cycle. In that process, the deceased sustained multiple injuries. On the way to the hospital, he died. Over the occurrence, a case in Crime No.73 of 2015 was registered for the offences under section 304(A) IPC and 187 of MV Act by the Colachal Police Station. Seeking compensation of Rs.40,00,000/- by the dependants, the claim petition was filed.

3.That was resisted by the 1st respondent in the claim petition stating that the vehicle which belongs to him did not involve in the occurrence. It is also stated



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that the deceased hit the parked vehicle bearing registration No.TN-75-F-8426. So according to him, his vehicle was not involved in the occurrence.

4.The second respondent, who is the appellant herein stated that the deceased is not having any proper driving licence, he alone contributed towards the occurrence. The vehicle mentioned in the petition is not involved in the occurrence. He supported the contention raised by the petitioner.

5.Before the Tribunal, on the side of the claimants, two witnesses were examined and 10 documents marked. On the side of the Insurance Company, 3 witnesses were examined and 3 documents marked.

6.At the conclusion of the enquiry process, the Tribunal found that the occurrence occurred only due to the rash and negligent driving of the driver of the first respondent and awarded a total compensation of 30,94,000/-.

7.Regarding the first issue of negligence, the Tribunal has recorded a finding that the vehicle bearing registration No.TN-74-A-7306 was involved in the



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occurrence. It was taken to the Regional Transport Office, Marthandam for inspection.

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8.The first respondent was examined as RW1. The relevant portion was extracted by the Tribunal. Wherein it is admitted by him that Crime No.73 of 2015 was registered against the driver of his vehicle. Now the case is pending before the District Munsif-cum-Judicial Magistrate, Eraniel.

9.The driver was examined as RW2. He has stated that on the particular time and date of occurrence he parked his vehicle on the Cholacal Tempo stand.

10.The eye witness to the occurrence was examined as RW3. He has also stated that the first respondent vehicle hit the two wheeler, which was driven by the deceased. In turn, due to the impact the two wheeler hit the stationed Lorry TN-75-F-8426.

11.From the evidence of RW3, who is the eye witness, it is seen that the occurrence took place only because of the hitting by the first respondent's vehicle. Consequently the two wheeler hit on the back side of the stationed vehicle. So, the main reason for the occurrence



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is the first respondent vehicle. When there is hitting behind, naturally the offending vehicle driver takes the responsibility. So the manner in which the occurrence took place clearly indicates the rash and negligent on the first respondent vehicle driver. So, the finding of fact recorded by the Tribunal that only the first respondent vehicle involved in the occurrence and the occurrence took place because of the first respondent vehicle driver requires no interference.

12.Regarding the compensation amount, the Tribunal took note of the fact that the deceased was an Engineering Graduate. On that account, it fixed the notional income at Rs.20,000/- per month. This portion of the fixation is objected by the appellant stating that it is on the higher side.

13.The learned counsel appearing for the appellant would submit that the Tribunal ought to have fixed Rs. 15,000/- as notional income.

14.Per contra, the learned counsel appearing for the respondents relied upon the following judgments viz.,

**(1)Reliance General Insurance Co. Ltd. Vs. A.Senthilkumar
(2021(1)TN MAC 805 (DB); (2)Royal Sundaram Alliance**



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Insurance Company Limited, Chennai & others Vs.

S.K.Vijayakumar and others (CDJ 2024 MHC 143); and (3)New

India Assurance Co. Ltd., Mettupalayam, Annapurna

Buildings, Coimbatore District Vs. Karuppiah and others

(CMA(MD)No.476 of 2023, dated 05/01/2024) to impress upon

the Court that for a young Engineer, uniform notional income is fixed by the Court is Rs.18,000/- to Rs.20,000/-.

15.Here, the Tribunal has fixed the notional income at Rs.20,000/-. Fixing the notional income is always guess work. The Courts have to fix the notional income on the basis of the guess work. As mentioned above, unless the appellate is able to convince this court that that portion of the fixation made by the Tribunal suffers from any illegality, this Appellate court cannot interfere.

16.The amount has been fixed at the discretion of the Tribunal. I find no reason to interfere into that portion. Considering the age of the deceased normally even a daily wager will get Rs.600 to Rs.800/- per day. So an Engineering Graduate would have earned much more in a properly placed job. So the fixation of Rs.20,000/- as notional income is reasonable. I find no reason to interfere into that portion.



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17.In respect of other categories, no objection is made by the appellant. So the other categories of compensation also requires no interference.

18.In the result, this Civil Miscellaneous Appeal is **dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

25/04/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal/
Special Sub Court dealing with MCOP
cases, Tirunelveli.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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