



C.M.A.(MD).No.621 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

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C.M.P.(MD).No.5979 of 2021

M/s.National Insurance Co.Ltd.,
Divisional Office,
No.33, Promenade Road,
Contonment,
Trichy – 620 001.

... Appellant/Respondent No.3

Vs.

1.Suresh Babu

2.Minor Pritheiveraj

3.Minor Anushree

(Minor Petitioners No.2 & 3 are rep. by their father & Guardian Suresh Babu, the 1st Petitioner)

... Respondents/Petitioners

4.Manoharan

... Respondent/Respondent No.1

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Employee Compensation Act, to set aside the Judgment and decree passed by the Motor Accident Claims Tribunal cum Special District Judge to deal with M.C.O.P. Cases, Tiruchirappalli, made in M.C.O.P.No.238 of 2016, dated 04.02.2020.



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For Appellant : Mr.R.Rajamani
For Respondents : Mr.N.Sudhagar Nagaraj for R1
R2 & R3 – Minors
For R4 – No Appearance

JUDGMENT

This appeal has been filed to set aside the Judgment and decree passed by the Motor Accident Claims Tribunal cum Special District Judge to deal with M.C.O.P. Cases, Tiruchirappalli, made in M.C.O.P.No.238 of 2016, dated 04.02.2020.

2.The facts in brief:

The deceased one Suguna was working as Accountant in a private concerned and earning a sum of Rs.20,000/- per month and aged about 33 years at the time of occurrence. On 15.12.2015 at about 3.45 p.m, she was returning from State Bank of India, Kailasapuram Branch in Thiruverumbur in a two wheeler bearing Registration No.TN 45 AM 2461 on the Trichy to Thanjavur Main Road. At that time, near the place of occurrence, a tipper lorry bearing Registration No.TN 48 B 9481, which belongs to the first respondent was driven by its driver in rash and negligent manner and hit the deceased behind. She sustained grievous



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injuries, taken to Appollo Hospital, Trichy, but, died without responding to the treatment on the very same day. Claiming compensation amount of Rs.30,00,000/-, the dependencies namely the husband and children filed the claim petition.

3.That was resisted by the respondent, who is the appellant herein by filing counter stating that the deceased without proper and valid driving licence, without any insurance and without wearing helmet, drove the vehicle in rash and negligent manner, crossed the road suddenly in the middle of the road and invited the accident. The owner of the Insurer of the vehicle bearing registration No.TN 45 AM 2461 are necessary parties and other customary denials were made.

4.Before the Tribunal on the side of the claimants three witnesses were examined and 7 documents were marked. On the side of the respondent one witness was examined and one document was marked.

5.At the conclusion of the enquiry, the Tribunal recorded a finding with regard to the negligent aspect that the accident took place because



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of the rash and negligent manner of the driving of the RW1 and fixed the responsibility.

6.Regarding the quantum, the age of the deceased was fixed as 33 years on the basis of the entry made in the postmortem certificate under Ex.P2. Monthly income was fixed as Rs.15,000/- notionally. 1/3rd was deducted towards personal expenses. Multiplier was taken as 16. Loss of dependency was worked as Rs.26,88,000/-. To that other customary compensation amounts were added and finally arrived the total compensation as Rs.29,44,000/-.

7.Aggrieved over the same, this appeal is preferred by the Insurance company, challenging the negligent aspect as well as the quantum. Regarding the negligent aspect, it was contended that the deceased was not owning proper driver licence, did not wear the helmet and hit behind the stationed bus. The Motor Vehicle Report also shows the damages caused to the vehicle of the deceased. So according to the appellant this aspect was not considered by the Tribunal.



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8.Now, we will see the evidence on record and as well as the finding of the Tribunal. Before the Tribunal, PW1 and PW3 were examined as eye witness. PW1 is the first petitioner and husband of the deceased. But he has not seen the occurrence. PW3 is the eye witness to the occurrence. According to him, the deceased was riding the two wheeler in the left hand side of the road. A lorry came behind her and hit. Driver of the offending vehicle namely Mariappan was examined as RW1 and in his evidence he has stated that the deceased dashed on a stationed bus. Because of the impact she lost the control and dashed against the lorry and fell down. This story was disbelieved by the Tribunal on the ground that no proper complaint was lodged by him immediately, after the occurrence. FIR was only registered as supra narrated by the RW1 before the Tribunal, which was not supported by any independent evidence.

9.Since it is a case of hit behind, naturally, RW1 has to take the responsibility for the rash and negligent driving, in the absence of any other evidence on the side of the appellant. The manner in such the accident took place clearly indicates the rash and negligent driving on the



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part of PW1. I find absolutely no reason to differ from the above said finding of the fact recorded by the Tribunal.

10.Regarding other things that the deceased was not owning proper driving licence and wearing helmets, absolutely, there was no evidence. Except the driver of the offending vehicle, no other witness was examined on the side of the appellant. In the absence of any evidence on the side of the appellant, this contention is also not tenable. It is rightly considered by the Tribunal, this argument is also rejected.

11.Regarding the quantum, I find that the loss of dependency has been correctly calculated by taking into account the educational qualification of the deceased, by taking the notional income as Rs.15,000/- per month. The contention on the part of the claimant that the deceased was working as accountant in a private concerned and earning Rs.20,000/- per month was not established through proper evidence. Taking the Rs.15,000/- as notional income cannot be considered to be on the higher side, though Ex.P8 salary certificate was marked.



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12. But, the Tribunal has committed an error in awarding compensation for Rs.1,00,000/- towards love and affection category, which is not permissible. When consortium is awarded no separate category towards loss of love and affection can be ordered. So that category is removed. Other compensation amount like transport expenses, loss of estate and funeral expenses were reasonably fixed. From the total compensation amount of Rs.29,44,000/-, Rs.1,00,000/- alone is ordered to be deducted. The balance amount will be come to Rs.28,44,000/-. To that extend, the award passed by the Tribunal is modified and consequently, the proportional share of the claimants also modified.

With the above said modifications, this civil miscellaneous appeal stands partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced to Rs.28,44,000/- (Twenty Eight Lakhs and Forty Four Thousand only), which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant/ insurance company is directed to deposit the



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entire compensation of Rs.28,44,000/- (Twenty Eight Lakhs and Forty Four Thousand only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs before the Tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / insurance company, the claimants are permitted to withdraw their respective share amount after following the due process of law, less any amount already received by them.

(iv) Consequently, connected miscellaneous petition is closed.

12.06.2024

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Motor Accident Claims Tribunal cum Special District Judge to deal with M.C.O.P. Cases, Tiruchirappalli.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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