



C.M.A(MD)No.661 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.06.2024

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THE HONOURABLE MRS.JUSTICE **G. ILANGO VAN**

C.M.A(MD)No.661 of 2021

and

C.M.P.(MD)No.6265 of 2021

The Branch Manager,
The Oriental Insurance Company Limited,
Office at Salai Road,
Dindigul.

... Appellant / 2nd Respondent

Vs

1.Neelavathi

... 1st respondent / Petitioner

2.T.Karuppusamy

(2nd Respondent remained exparte
before the lower Court)

... 2nd Respondent/ 1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act to set aside the decree and judgment made in M.C.O.P.No.772 of 2017, dated 04.03.2020, on the file of the Motor Accidents Claims Tribunal cum Principal District Judge (Presiding Officer), Dindigul.



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For Appellants : Mr.C.Jawahar Ravindran
For R1 : Mr.S.Sarvagan Prabhu
For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the decree and judgment made in M.C.O.P.No.772 of 2017, dated 04.03.2020, on the file of the Motor Accidents Claims Tribunal cum Principal District Judge (Presiding Officer), Dindigul.

2. The facts in brief is that on 23.01.2017 at about 3 p.m., the deceased Sivasamy was riding his two wheeler along with two pillion riders from Vedasandur to Eriyodu keeping left side of the road. At that time, the first respondent vehicle driver was driving the vehicle bearing registration number TN 57 AP 4420 in a rash and negligent manner and hit the said Sivasamy. As a result of which, he sustained grievous injuries, taken to the Government Hospital, Dindigul, later to Government Rajaji Hospital and died there. On the date of the accident, the deceased was working as a Mason and earning



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Rs.10,000/- per month. Claiming compensation of Rs.20 lakhs, the dependants filed the claim petition.

3. That was resisted by the insurance company stating that the deceased drove the two wheeler without valid driving licence. Because of the rash and negligence on the part of the rider of the two wheeler, the occurrence took place. So he is not entitled for any compensation.

4. Before the Tribunal, on the side of the claimants two witnesses were examined and four documents were marked. On the side of the respondent namely the appellant, none was examined and no document was marked.

5. With regard to the first point of negligence, the Tribunal recorded a finding that it occurred due to the rash and negligent driving on the part of the first respondent vehicle driver. It arrived at a conclusion based upon Ex.P1 FIR and the evidence of P.W.1.

6. The Tribunal has awarded the following compensation :



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Particulars	Compensation
Loss of dependency	Rs.14,11,200
Loss of estate	Rs. 15,000/-
Loss of love and affection for petitioner	Rs. 50,000/-
Loss of Consortium	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Transport expenses	Rs. 10,000/-
Total	Rs.15,41,200/-

7. The Tribunal took the monthly income of the deceased as Rs.7,000/- per month to that future prospects of 40% was added. Thereby, the total annual income was assessed at Rs.1,17,600/-. After deducting 1/3 towards the personal expenses, the annual income was assessed at Rs.78,400/-. The age of the deceased was 21 at the time of accident. So multiplier 18 was taken. The total compensation amount under the loss of income was calculated at Rs.14,11,200/-. To that the customary amounts were added and finally arrived at Rs.15,41,200/-. Challenging the same, the insurance company preferred an appeal.

8. Heard both sides.



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9. The learned counsel for the appellant would submit that three persons were travelling in the two wheeler in violation of Section 128 of the Motor Vehicles Act. Apart from that the deceased was a bachelor, so half of the amount must be deducted toward the personal expenses.

10. Per contra, the contention on the part of the respondent is that it is not the ground taken by the insurance company before the Tribunal. In the counter, it has been simply stated that the rider of the two wheeler was not having any valid driving licence. Regarding the first aspect of contributory negligence, the Tribunal has recorded a finding on the basis of the eye witness namely the P.W.2. The eye witness has stated in his evidence that the occurrence took place because of the rash and negligence on the part of the first respondent vehicle driver.

11. Except the eye witness, no contra evidence was let in by the appellant. The manner of the accident was also be taken into consideration. It appears that the deceased was driving the two wheeler along with two pillion riders on the Vendasandur to Eriyodu main road from East to West direction. The first respondent vehicle driver was coming in the opposite



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direction, eventhough the claimant was keeping his left, it appears that the first respondent driver that against the two wheeler. The manner of the accident itself thus indicate that the first respondent vehicle driver was negligent in his driving. So that part of the Tribunal's finding cannot be found fault. Regarding the pillion rider, it is admitted by the claimant herself that along with the deceased, two other persons were also riding the two wheeler. It is a violation of Motor Vehicles Act. In such situation, driving two persons in the pillion would be contributed the rider in controlling the vehicle. So naturally contributory negligence must also placed upon the deceased. Considering the fact, 25% of negligence was fixed upon the deceased and 75% of negligence was fixed upon the first respondent which is correct and tenable.

12. Regarding the compensation amount, the Tribunal fixed the monthly income of the deceased as Rs.7,000/- which is reasonable. Even the daily labour, he will get Rs.600-700 per day, normally, so the amount fixed by the Tribunal is not on higher side. The Tribunal has committed a mistake in deducting 1/3 in the personal expenses. As per the judgment of **Sarala Verma Vs. Delhi Transport Corporation**, reported in **2009(2) TNMAC 1**



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(SC), naturally the bachelor deduction should be half. But if the dependant and the family is large, then 1/3 deduction can be done. But except the claimant, who is the mother of the deceased, no other person is there to claim as his dependant. So half of the amount must be deducted towards the personal expenses. Rs.58,800/- (1,17,600 /2). Multiplier 18 is proper. Recalculated the dependency comes around Rs. 58,800 x 18 = 10,58,400/- loss of estate. For Loss of love and affection, the petitioner is not entitled for separate compensation, since the claimant being the mother is entitled for filial consortium which would arrived at Rs.40,000/-. Therefore, the award is recalculated as follows:

Particulars	Compensation
Loss of dependency	Rs. 10,58,400
Loss of estate	Rs. 15,000/-
Loss of Consortium	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Transport expenses	Rs. 10,000/-
Total	Rs.11,38,400/-

13. Deducting 25% of the contributory negligence, the claimant is entitled for only 75% of the award amount. Therefore, 8,53,800/- (75% of 11,38,400).



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14. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

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(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.15,41,200/- to Rs.**8,53,800/-** (Rupees Eight Lakhs Fifty Three Thousand Eight Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant /Insurance company, is directed to deposit the award amount of Rs.8,53,800/- (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 to the credit of M.C.O.P.No.772 of 2017 on the file of Motor Accidents Claims Tribunal cum Principal District Judge, (Presiding Officer), Dndigul, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the claimant is permitted to withdraw the amount as per the order of the Tribunal.

(iv) Consequently, connected miscellaneous petition stands closed. No costs.

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

- 1.The Motor Accidents Claims Tribunal cum Principal District Judge,
(Presiding Officer), Dndigul,
- 2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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