



C.M.A.(MD) No.1055 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1055 of 2024

and

C.M.P.(MD)No.10983 of 2024

1.National Insurance Company Ltd.,
Represented through its Branch Manager,
Office at Anguvilas Building,
112, North Car Street, Nagercoil,
Kanyakumari.

2.National Insurance Company Ltd.,
Represented through its Branch Manager,
Office at No.37/C,
S.N.High Road, Thirunagar,
Tirunelveli Junction,
Tirunelveli, Tamil Nadu.

... Appellants

Vs.

1.Anitha,
2.Minor Gowshika,
3.Minor Deshvanth,
(Minors represented by their mother/1st respondent)
4.Chellathai,
5.Sundaralingam,
6.Arul Seelan.

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 17.07.2023 passed in M.C.O.P.No.711 of 2022, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Tirunelveli.

For Appellants : Mr.D.Siva Raman

For Respondents

for R1 to R5: Mr.P.Samuel Gunasingh

for R6 : Dispensed with

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the finding on negligence and quantum of compensation.

2. The respondents 1 to 5 filed a claim petition stating that while the deceased was riding his two wheeler, the rider of the two wheeler insured with the appellant came in opposite direction in a rash and negligent manner and dashed against the two wheeler ridden by the deceased, as a result of which the deceased sustained fatal injuries.

3. The rider of the insured vehicle remained *ex parte* before the Tribunal.



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4. The appellants filed a counter stating that the accident took place only due to the negligence of the deceased; that the rider of the insured vehicle did not have a valid licence; and that in any case, the compensation claimed was excessive.

5. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P12. The appellants examined R.W.1 to R.W.3 and marked Exs.R1 to R9.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the rash and negligent riding of the two wheeler insured with the appellants and directed the first appellant to pay the compensation of Rs.25,03,000/-.

7. The learned counsel for the appellants submitted that the evidence before the Tribunal would suggest that the rider of the two wheeler insured with the appellants, was not guilty of negligence; that in any case, the deceased did not have a valid licence and died due to the head injuries, which suggest that he had contributed to the accident and his death was due to the same; that hence, the contributory negligence



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ought to have been fixed on the deceased and that the quantum of compensation awarded by the Tribunal is excessive.

8. The learned counsel for the respondents 1 to 5, per contra, submitted that the award of the Tribunal is just and reasonable and no interference is called for.

9. Since the sixth respondent remained *ex parte* before the Tribunal, notice to the sixth respondent is dispensed with.

10. The points for consideration in the instant appeal are as follows:

'a. Whether the finding on negligence by the Tribunal is justified?

b. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?'

11. As regards the first point, it is seen that the claimants had examined P.W.2/eyewitness to the occurrence, who spoke about the manner of the accident. The appellants, though had examined three witnesses, had not examined the rider of the insured vehicle or any other



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eyewitnesses to dislodge the evidence produced in on the side of the claimants. Further, the evidence of P.W.2 is corroborated by the rough sketch, FIR and the Final Report filed by the Police. Therefore, the finding of the Tribunal that the rider of the insured vehicle was guilty of negligence, cannot be faulted.

12. Though it is the case of the appellants that the deceased did not have a valid licence, it is well settled that the non-production of the driving licence cannot be the only basis to attribute contributory negligence. That apart, though the postmortem report shows that the deceased died due to the head injuries, in the absence of any evidence to show that the deceased did not wear helmet, the said fact cannot be presumed only on the basis of the postmortem report. Point No.1 is answered accordingly.

13. As regards the compensation, it is seen that the deceased was working as a mason. Considering his avocation, year of the accident and the age of the deceased, the notional income was fixed at Rs.12,000/- p.m., by the Tribunal, which is just and reasonable. The computation under the head 'loss of income' by adding future prospects and the



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multiplier is justified. The compensation under the other heads is reasonable and in accordance with law. Therefore, this Court is of the view that there is no infirmity in the award of the Tribunal and no interference is called for and hence, deserves to be confirmed.

14. The first appellant/Insurance Company is directed to pay the compensation of **Rs.25,03,000/-** (Rupees Twenty Five Lakhs and Three Thousand only) together with interest at 7.5% p.a., from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

15. On such deposit, the respondents 1, 4 and 5/claimants are permitted to withdraw the their share amount with interest and costs, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

16. The share of the minor claimants/respondents 2 and 3 herein may be deposited in any one of the Nationalized Bank in an interest-bearing Fixed Deposit, initially for a period of three years, renewable



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thereafter, till the minors attain majority. The guardian of the minors/the first respondent herein, who is their mother, is permitted to withdraw interest from the said deposit, once in three months and utilise the same for the welfare of the minor claimants/respondents 2 and 3 herein.

17. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. The Motor Accidents Claims Tribunal, Principal District Judge,
Tirunelveli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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