



C.M.A.(MD).No.945 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.08.2024

DELIVERED ON : 16.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.945 of 2024
and C.M.P.(MD).No.9976 of 2024

The Branch Manager,
The New India Assurance Co. Ltd.,
85-A, KRA Hospital Building,
Market Road, Thanjavur.

... Appellant/2nd Respondent

Vs.

1.Balakumar

2.Suganya

... Respondents 1 & 2/Petitioners

3.Anbarasan

... 3rd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 31.10.2023 made in M.C.O.P.No.625 of 2022 on the file of the Motor Accident Claims Tribunal (Special District Court), Thanjavur.

For Appellant : Mr.I.Robert Chandra Kumar

For Respondents : Mr.P.Edin Brough for R1 & R2
Mr.R.Narayanan for R3



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JUDGMENT

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This appeal has been directed against the fair and decreetal order, dated 31.10.2023 made in M.C.O.P.No.625 of 2022 on the file of the Motor Accident Claims Tribunal (Special District Court), Thanjavur.

2.The facts in brief:

On 13.03.2022 at about 04.00 p.m., the first petitioner was riding his two wheeler bearing registration No.TN 48 AN 5195, along with his wife and his child as pillion rider, on the Kumbakonam to Thiruvaiyaru Road, from East to West direction. At that time, the first respondent driving a two wheeler bearing registration No.TN 68 F 5106 in rash and negligent manner, suddenly crossed the road and caused the accident. As a result of which, the claimant's daughter suffered injuries. She was taken to the Government Hospital, Kabisthalam, later to the Thanjavur Medical College Hospital, Thanjavur. But, she died without responding to the treatment on 15.03.2022. Over which, a case in Crime No.134 of 2022 was registered against the first respondent's vehicle driver. Claiming compensation amount of Rs.25,00,000/- the claim application was filed.



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3. That was resisted by the Insurance company, by filing counter, contending that the occurrence took place because of the rash and negligent driving on the part of the first petitioner's vehicle's driver.

4. Regarding the compensation amount, the age of the deceased was fixed as one year three months. Multiplier 15 was adopted and loss of dependency was fixed at Rs.15,00,000/-. To that the customary amounts were added and finally the Tribunal awarded Rs.16,13,000 as total compensation.

5. Against which, this appeal is preferred by the insurance company and the learned counsel for the appellant would submit that he disputed the quantum. The age of the deceased was only 1 year 3 months at the time of the occurrence. So the multiplier was wrongly adopted as 15. The monthly income fixed by the Tribunal is also not proper.

6. Per contra the learned counsel for the respondent would submit that reasonable compensation was fixed by the Tribunal. So it requires no



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interference.

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7.Regarding the first aspect of negligence, no argument was advanced by the appellant herein. It was contended by the appellant before the Tribunal that the first claimant did not have proper driving licence. Without driving licence, he invited the accident. The Tribunal ought to have fixed the contributory negligence as against the 1st petitioner who was riding the two wheeler without having driving licence. The deceased pillion rider cannot be fastened with liability of contributory negligence. Moreover, as mentioned in the petition and in the complaint before the police station, it is seen that the first claimant has stated that the first respondent's vehicle's driver suddenly crossed the road and caused the accident. On that ground only, the Tribunal has recorded the findings. In the circumstances of the case, I find that no interference is called for in that finding.

8.Regarding the second aspect of compensation, it is seen that the Tribunal has taken Rs.1,00,000/- as the annual notional income of the deceased. She was only a child. So taking Rs.1,00,000/- as notional



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income per year may not be proper and appropriate. In the case of ***Meena Devi Vs. Nunu Chand Mahto Alias Nemchand Mahto and others*** reported in ***(2023) 1 SCC 204*** the Honourable Supreme Court, by taking into account the death of the children between the age group of 7, 12 and 15 years, taken the annual notional income as Rs.30,000/-. Multiplier 15 was adopted. In view of the above, it is seen that Multiplier 15 was correctly taken by the trial Court. But, Rs.1,00,000/- as mentioned above is not proper. So here the notional income was taken as Rs.30,000/- per year and to that multiplier 15 was adopted. By which, the loss of income is fixed as Rs.4,50,000/-. To which other customary amounts added by the Tribunal is remain unchanged.

9. Accordingly, the compensation awarded by the Tribunal is hereby reduced and refixed as follows:

<i>1.Loss of Income</i>	= Rs.4,50,000/-
<i>2.Filial consortium</i>	= Rs. 80,000/-
<i>3.Funeral Expenses</i>	= Rs. 15,000/-
<i>4.Loss of Estate</i>	= <u>Rs. 15,000/-</u>
	= <u>Rs.5,60,000/-</u>



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10. Accordingly, this civil miscellaneous appeal is partly allowed.

The respondents 1 and 2 are permitted to withdraw the amount in the apportion as ordered by the Tribunal. The appellant is directed to deposit the above said award amount, immediately, if not deposited. Consequently, connected miscellaneous petition is also closed. There is no order as to costs.

16.08.2024

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

1. The District and Sessions Judge, Motor Accident Claims Tribunal
(Special District Court), Thanjavur.
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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