



C.M.A(MD)No.269 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)No.269 of 2019
and
C.M.P(MD)No.3757 of 2019

The Divisional Manager
National Insurance Company Ltd.,
No.3, North Veli Street
Madurai

... Appellant/2nd Respondent

Vs.

Karuppaiah(Died)

Panchavarnam(Died)

1. Periyanan
2. Venkateshwaran
3. Thavamani
4. Srikanth

..Respondents 1 to 3/Petitioners

..4th Respondent/1st Respondent

(R4 set exparte in Tribunal, Notice Dispensed with)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988,against the judgment and decree dated 29.11.2017 made in



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MCOP No. 2 of 2016 on the file of the Motor Accident Claims Tribunal,
Additional District Court (Fast Track Court) Paramakudi.

For Appellant	:Mr.J.S.Murali
For R-1 & R2	:No appearance
For R3	:Mr. Yogesh Kannadasan
For R4	: Exparte

JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN,J.**)

This Civil Miscellaneous has been preferred by the appellant/Insurance Company as against the order passed in M.C.O.P No.02 of 2016, on the file of the Motor Accidents Claims Tribunal/Additional District Court(Fast Track Court) Paramakudi.

2. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Tribunal.

3. The brief facts of the petition averments are:

On 30.08.2012 at about 9.00 pm., while the son of the petitioner was



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travelling towards Madurai – Rameswaram National Highways, Mani Nagar near Moovendar Nagar in a two wheeler bearing Reg.No. TN 65Z8573 along with one Vairavan from west to east, at that time, a car bearing Reg. No.TN 67 AB 1065 came in the opposite direction in a rash and negligent manner without following the traffic rules, dashed against the two wheeler. Due to the said accident, the son of the petitioner succumbed to injuries. At the time of the accident, the age of the deceased is 28 years and he was working in Saudi Arabia as Mansour Al Mosaad Co., and he was earning 1500 Saudi Riyaz per month, i.e.,as per Indian Currency Rs.22,245/-. Due to the death of the son the petitioner, the petitioner and their family had suffered loss of income and loss of love and affection. The accident has occurred only to due to rash and negligent driving of the first respondent driver. The vehicle of the first respondent was insured with the second respondent, therefore the petitioners/claimants have preferred the claim petition before the Motor Accidents Claims Tribunal seeking compensation of Rs.20,00,000/-.

4. The first respondent remained exparte before the Tribunal.



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5. The brief facts of the counter filed by the second respondent is as follows:

The driver of the first respondent is not responsible for the accident. The petitioner has to prove that the deceased has valid licence at the time of accident and he has insured the vehicle with the second respondent insurance company. The second respondent denies the relationship of the parties. The amount earned by the deceased is also disputed. Since the deceased is a bachelor multiplier of '5' has to be adopted. At the time of accident, the deceased did not wear helmet and hence, the accident had occurred only due to the rash and negligent driving of the deceased. Therefore the second respondent is not liable to pay any compensation and the petition is liable to be dismissed.

6. In order to substantiate the case, on the side of the claimants they have examined P.W. 1 to P.W.3 and 14 documents were marked as Exps.P.1 to P. 14. On the side of the respondents, no one were examined and no documents were marked.



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7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.33,16,688/- towards compensation with interest at the rate of 7.5 % p.a. As against the award passed by the Tribunal, the second respondent therein has preferred this appeal on various grounds

8. The learned counsel appearing for the appellant/ Insurance company would contend that as per Ex.P.5/Salary certificate, the deceased was working in a firm from 25.08.2011 to 31.07.2012. Whereas the accident had occurred on 30.08.2012, i.e., one month after the said period. Further he would submit that the monthly income of the deceased as fixed as Rs.22,245/- by relying on document, Ex.P.5/Salary certificate alone. Without examining the author of the salary certificate/Ex.P.5 or any employer of the deceased or any other co- worker, therefore the Ex.P.5/salary certificate produced by the claimants is not proved and therefore that cannot be accepted and the said Ex.P.5 is not sustainable under law. Further he would submit that the deceased was a bachelor at the time of accident and the parents have filed the claim petition and subsequently they died pending claim petition. Thereafter the married brother and sister of the deceased



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were impleaded as claimants in the claim petition. The Tribunal adopted multiplier of 17 considering the age of the deceased, therefore the same is not sustainable. The award under other heads does not reflect just compensation. He would further submit that the deceased while riding the two wheeler there were other two persons travelled as pillion riders in the said vehicle and both of them wear helmet. Further the accident had occurred due to rash and negligent riding of the rider of the two wheeler and the Tribunal without considering the same, fastened the entire liability on the appellant, and therefore the award passed by the Tribunal is liable to be set aside.

9. The learned counsel appearing for the respondents/claimants would submit that the deceased was working as Mansour Al Mosaid Co in Saudi Arabia and he was earning a monthly income of 1500/- Saudi Riyaz. Though the accident took place on 30.08.2012 he got employment till October 2012 and that the deceased came to India for some personal purpose and thereafter he has to go abroad. The employment card/Ex.P.9, passport/Ex.P.8 and salary certificate/Ex.P.5 would go to show that during the relevant of point of time, the deceased was employed in Saudi Arabia. Therefore the Tribunal has taken the salary of the



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deceased as per Ex.P.5/salary certificate and the appellant has not disputed the salary certificate and also not challenged the same. Therefore the Tribunal has taken salary certificate and fixed the salary. Though at the time of filing claim petition the parents of the deceased filed claim petition as dependents of the deceased since the deceased died as bachelor and after six years only the parents died. Therefore the legal heirs of the claimants would have been substituted in the place of the claimants and therefore the Tribunal also considered the claim petition filed by the parents of the deceased and awarded compensation. Though the appellant/Insurance company have not examined any witnesses to prove the factum of negligence on the part of the deceased, the respondents/claimants have examined witnesses and proved that the accident had occurred only due to rash and negligent driving. P.W.2 was examined as witness who has spoken about the manner of accident and negligence on the part of the driver of the offending car. The respondent has not examined any witness. Even though the respondent has not examined the driver of the offending vehicle, a case was registered only against the driver of the offending car and also subsequently, charge sheet was laid before the Criminal Court under Section 304 (A) of IPC and the respondent has not produced any contra evidence that the accident had occurred due to rash



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and negligence riding of the deceased or the deceased has contributed his negligence in causing the accident. Therefore the Tribunal has rightly appreciated both the oral and documentary evidence and fixed the liability. Since at the time of accident, the offending vehicle was insured with the appellant and the insurance company is not liable to pay any compensation since at the time of accident, the insurance was in force therefore there is no reason to interfere with the order passed by the Tribunal.

10. This Court has heard both sides and perused the materials available on record. Upon hearing both sides and perusing the records, the points for determination in this appeal are as follows:

a) Whether the Tribunal has rightly fixed the liability on the side of the appellant ?

b) Whether the quantum of compensation fixed by the Tribunal is reflected just compensation?

11. The accident is admitted. In order to substantiate the case of claimants, on the side of the claimants three witnesses were examined. P.W.1 has



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spoken about the deceased, his employment and also income. Subsequently after examining one of the claimants both the claimants died and thereafter other legal heirs of the claimants have been substituted in order to prove the relationship of the other legal heirs and P.W.3 was examined and she has spoken about the relationship of the claimants and substituted claimants. The appellant has not spoken anything about the manner of the accident. However, on a perusal of evidence of P.W.2., he has clearly spoken about the accident and the accident had occurred only due to rash and negligent driving of the neighbour of the offending car. However, on a perusal of the materials placed before the Tribunal it is very clear that at the time of accident the deceased was riding two wheeler bearing Reg. No. TN 65Z 8573. Apart from the deceased, there were two other pillion riders who have occupied the said vehicle, which is also find in the motor vehicles rules. Further at the time of accident the deceased did not wear helmet and also on seeing the post mortem certificate of the deceased, it is seen that the deceased died due to head injuries. Therefore under such circumstances, the deceased has also contributed his negligence to some extent by occupying more than two persons which was the sole ground for contributory negligence and non wearing of helmet. However, this is the statutory negligence, therefore this Court



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finds that the deceased had contributed his negligence for the cause of death to the extent of 20%. The negligence of the driver of the offending vehicle was the cause for accident and also a case was registered against him and subsequently charge sheet was also laid against him under Section 304(A) of IPC. The offending vehicle was insured with the appellant and therefore, the insurance company is liable to pay compensation, thus the point is answered.

12. So far as quantum of compensation is concerned, P.W.1 has clearly stated that during the relevant point of time, the deceased was working in abroad and he came to India for some personal purpose and he has got an order of employment till October. The accident has occurred only on 30.08.2012. As per the Ex.P.9, the deceased was holding his employment till October 2012. Therefore the Ex.P.5/Salary Certificate show that the deceased was earning 1500 Saudi Riyaz which corresponding to Indian Rs.22,245/-. The Tribunal has considered Ex.P.5/Salary Certificate ,Ex.P.8/Passport and also Ex.P.9/Employment card issued by the employer of the deceased in Saudi, therefore Tribunal fixed the monthly salary of Rs. 22,245/- The appellant has not given any contra evidence to show that the deceased was not working in USA and the deceased was not



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earning the salary as fixed by the Tribunal. Therefore, there is no reason to disbelieve the evidence of P.W.1 who is the father of the deceased and the Tribunal has also considered the supportive documents Exs.P.5,8 and 9. As an appellate Court, the final court of fact finding this Court does not find any reason to differ with the consideration of the Tribunal. Therefore this Court is of the view that the during the relevant point of time, the deceased was earning a sum of Rs.22,245/- as monthly salary. The age of the deceased was not in dispute and the age of the deceased was about 28 years and therefore the multiplier is '17' and there is no contra evidence that the deceased was aged about 28 years at the time of accident. Even the entry made in the passport and the death certificate of the deceased would go to show that the deceased was aged about only 28 years. Since he was aged about 28 years, future prospectus of 40% would be taken into consideration. Since the dependents are only parents and subsequently they died, 50% can be deducted for personal expenses. Since at the time of accident, the offending vehicle was insured with the appellant, the appellant has to pay the said amount. So far as legal heirs are concerned, though the learned counsel appearing for the appellant submitted that the parents died and now the claimants are only married brother and sisters they are only dependents but the parents have



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only filed claim petition and they filed the claim petition only in the year 2012. Even the first claimant was examined as P.W.1 in the year 2014 and thereafter for one reason or another the claim petition is pending. The claimants died pending claim petition and before concluding trial. Therefore the legal heirs of the claimants were impleaded and they are entitled to get the compensation. While re-appreciating the entire materials, this Court does not find any reason to differ the findings of the Tribunal and in other heads, the award passed by the Tribunal is just compensation.

13. Admittedly, at the time of accident three persons travelled in the two wheeler, which was ridden by the deceased. At the time of accident neither the deceased nor the pillion rider wore helmet. The doctor who has conducted autopsy has also given post mortem certificate and as per the post mortem certificate the deceased sustained head injuries. Therefore, this Court is inclined to fix 20% contributory negligence on the deceased for non-wearing of helmet and also for travelling three persons in a two wheeler. Accordingly, the award of the Tribunal is reduced from Rs.33,16,688/- to Rs.26,53,350/- [*Rs.33,16,688/- - Rs.6,63,338/- (being 20%)*].



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14. In the result, this Civil Miscellaneous Appeal is partly allowed to the extent indicated above and the respondents 1 to 3/claimants are entitled to a sum of Rs.26,53,350/- as apportioned by the Tribunal. The appellant/Insurance Company is directed to deposit the award amount with interest at the rate of 7.5% p.a., from the date of petition till date of realisation, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently connected miscellaneous petition is closed.

[P.V.,J.] [K.K.R.K.,J.]
21.08.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
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To
1.The Motor Accident Claims Tribunal/
Additional District Court (Fast Track Court) Paramakudi.

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



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