



C.M.A.(MD)No.433 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON :12.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.433 of 2019

The Divisional Manager,
United India Insurance Company
Limited,
Divisional Office,
Promenade Road, Cantonment,
Tiruchirappalli.

... Appellant / 2nd respondent

Vs.

1.Minor.Thinagaran

2.Minor.Deepika

3.Muralidharan

4.Muthulakshmi

... Respondents 1 to 4/ Petitioners

5.Ramanathan and Company,
No.114 G1 Green House Apartments,
MC Reynolds Road, Cantonment,
Trichy District.

... 5th Respondent / 1st respondent



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(Minor Respondents 1 and 2 are represented by their mother / next friend Muthulakshmi / 4th respondent herein)

(Minor 3rd respondent is declared as major and discharged his mother from the guardianship vide court order dated 03.09.2019 made in C.M.P. (MD)No.6760 of 2019 in C.M.A.(MD)No.433 of 2019)

PRAYER: Civil Miscellaneous Appeal filed under Order 173 of Motor Vehicles Act, 1988, to set aside the Judgment and decree dated 29.08.2016 passed in M.C.O.P.No.1792 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court), Tiruchirappalli.

For Appellant : Mr.I.Robert Chandra Kumar

For Mr.G.Prabhu Rajadurai

For R-1 To R-4 : Mr.N.Sudhagar Nagaraj

For R-5 : No appearance



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JUDGMENT

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This Civil Miscellaneous Appeal is filed by the appellant Insurance Company against the Judgment and decree dated 29.08.2016 passed in M.C.O.P.No.1792 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court), Tiruchirappalli, challenging the quantum as well as the liability fixed on the Insurance Company.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.

3. The brief facts in a nutshell are as follows:

(i) This is a fatal case. The 4th petitioner is the wife of the deceased. The petitioners 1 to 3 are the minor children of the deceased. The deceased Anbazhagan was employed as a driver under the 1st respondent and the 2nd respondent is the Insurance Company in which the vehicle involved in the accident was insured. On 05.06.2012 at about 3.30 P.M., the husband of the 4th petitioner namely Anbazhagan drove a mini tanker lorry bearing registration No.TN 45 AS 4823 belonging to 1st respondent in Trichy -



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Chennai national highways from south to north. While the vehicle reached near Nedungoor milestone, the deceased applied sudden break thereby a mini tanker lorry hit against the center median and capsized on the right side. As a result of which, the said Anbazhagan sustained fatal injuries and died on the spot itself. At the time of the accident, the deceased was about 36 years old. Hence, the legal heirs of the deceased have filed M.C.O.P.No.1792 of 2013 before the Motor Accidents Claims Tribunal (Special District Court), Tiruchirappalli, seeking compensation for the loss of life of the deceased Anbazhagan.

(ii) The 2nd respondent had filed a counter refuting the allegations putforth in the claim petition. It was pleaded in the said counter that the accident happened only due to the negligence on the part of the deceased himself. He was the tort feisor of the crime. Hence, the legal heirs of the deceased not entitled to file a claim petition for seeking compensation.

(iii) Two issues were framed by the learned Tribunal. Following which three witnesses were examined, i.e., the wife of the deceased was



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examined as PW-1, the company mechanic who travelled along with deceased at the time of the accident was examined as PW-2, , that is, the eye witness, the Branch manager of 1st respondent concrete company was examined as PW-3 and Ex.P-1 to Ex.P-6 were marked on the side of the petitioners in which Ex.P-1 is the True copy of FIR, Ex.P-2 is the True copy of the postmortem certificate, Ex.P-3 is the legal heir certificate, Ex.P-4 is the 1st respondent's R.C. Book copy, Ex.P-5 is the 1st respondent's Insurance policy copy, Ex.P-6 is the driving license copy of the deceased. Three witnesses were examined, i.e., Perambalur RTO Office, Junior Assistant was examined as RW-1, S.I. Of Police Siruganur was examined as RW-2, Officer of the 2nd respondent was examined as RW-3 and Ex.R-1 to Ex.R-4 were marked on the side of the respondents in which Ex.R-1 is the Insurance policy copy, Ex.R-2 is the Investigation report, Ex.R-3 is the Advocate notice sent to 1st respondent, Ex.R-4 is the served acknowledgment card and court documents Ex.X-1 to Ex.X-7 were marked in which Ex.X-1 is the Authorisation letter, Ex.X-2 copy of staff attendance register, Ex.X-3 is the salary certificate, Ex.X-4 is the salary register copy, Ex.X-5 is the RTO, Office Perambalur letter dt 24.06.2014, Ex.-6 is the RTO, Office perambalur letter dt 24.06.2014, Ex.X-7 is the series Siruganur P.S.Cr.No.113/2012 C.D.file.



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(iv) From the evidence of the eye witness i.e., PW-2, he travelled along with the deceased in the said mini tanker lorry. While the vehicle was driven by the deceased in Trichy-Chennai National Highways, near Negungoor milestone at the time in order to avoid dashing another vehicle, attempted to cross the said mini tanker lorry, the driver / deceased Anbazhagan was forced to turn the vehicle on right side, thereby the vehicle hit against the median and got capsized. On perusal of the FIR Ex.P-1 would reveal that as per the statement given by PW-2, FIR was lodged as against the deceased.

(v) The manager of the 1st respondent company was examined as PW-3 and as per his evidence at the time of the accident the deceased was employed under the 1st respondent and he received Rs.12,250/- (Rupees Twelve Thousand Two Hundred and Two Fifty only) as monthly income. The salary certificate and the register extract were marked as EX.X-3 and EX.X-4 and the authorization of letter and the attendance register marked as EX.X-1 and EX.X-2.



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(vi) On the basis of the oral and documentary evidence and the arguments submitted by the respective parties before the Tribunal, the learned Tribunal had concluded that the accident happened only due to the intervention of another unknown lorry who attempted to come closer with mini tanker lorry, as a result of which, the deceased Anbazhagan was compelled to turn to right side unexpectedly. As a result of which, the vehicle hit against the center median and capsized. Hence, the learned Tribunal proceeded to fix 50% contributory negligence on the deceased in the said accident. Thereafter, on the basis of the postmortem report the learned Tribunal fixed the age of the deceased as 37 years.

(vii) On the basis of EX.X-4, the learned Tribunal has fixed Rs. 10,600/- (Rupees Ten Thousand and Six Hundred only) as monthly income of the deceased, for which $\frac{1}{4}$ th amount was deducted for his personal expenses ($\text{Rs.}10,600 * \frac{1}{4} = \text{Rs.}2650$). Since the deceased was 36 years old, the relevant multiplier 15 was taken into consideration by the Tribunal. Hence, the loss of income would arrive at Rs.14,31,000/- (Rupees Fourteen Lakhs and Thirty One Thousand only) ($\text{Rs.}7,950 * 12 * 15 = 14,31,000$). On considering the fatal death the compensation awarded by the learned



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Tribunal are as follows:

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S.No.	Description	Amount
1.	Loss of income	Rs.14,31,000/-
2.	Transport and Funeral Expenses	Rs. 25,000/-
3.	Consortium for the 4 th petitioner	Rs. 50,000/-
4.	Loss of Love and affection for the petitioners 1 to 3	Rs. 1,00,000/-
	Total	Rs.16,06,000/-
	50% contributory negligence deducted	Rs. 8,03,000/-
	Total	Rs. 8,03,000/-

Aggrieved by that award, the appellant / Insurance Company has filed the present appeal.

4. The learned Counsel appearing for the appellant / Insurance Company has submitted that two vehicles were not involved in the accident. Hence, fixation of contributory negligence is not sustainable. The learned Counsel appearing for the appellant / Insurance Company further submitted that since the deceased himself being the tortfeasor, his legal



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heirs are not entitled to get any compensation. Hence, the award passed by the Tribunal is liable to be set aside.

5. Per contra, the learned Counsel appearing for the claimants / respondents has submitted that the petition has been filed under Section 163 (A) and 167 of Motor Vehicles Act, 1988 and that the learned Tribunal ought to have considered that the amendment in Motor Vehicles Act, 1988 by inserting 163 (A) was brought in the year 1994 and was inserted by Act 54 of 1994. Hence, the claimants are entitled to get compensation as per Section 167 of the Motor Vehicles Act, 1988. It was further contended that the learned Tribunal ought to have passed an award for future prospects as well.

6. Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondents 1 to 4 and perused the materials available on record.



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7. On critical perusal of the oral and documentary evidence and the submissions made by both the Counsels, it is clear that the accident had happened not due to the whole negligence of deceased. But the same had happened, only when he tried to prevent another lorry from hitting, keeping the vehicle on his right side. Hence, I do not find any demerits in the 50% contributory negligence fixed by the Tribunal. In view of the same, I am not inclined to interfere with the award passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal is dismissed.

8. The appellant / Insurance Company is directed to deposit the entire compensation amount as awarded by the Tribunal with accrued interest and costs to the credit of M.C.O.P.No.1792 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Court), Tiruchirappalli, within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the respondents / claimants are entitled to get their shares as per the apportionment fixed by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal.



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The respondents 3 and 4 / claimants are permitted to withdraw their shares together with interest and the share of the minor respondents 1 and 2 shall be deposited in any one of the Nationalised Banks till they attain majority. The 4th respondent, who is the mother of the minor claimants is permitted to withdraw the interest of minors once in three months directly from the Bank. No costs.

12.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

The Motor Accident Claims Tribunal/
(Special District Court)
Tiruchirappalli.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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