



C.M.A(MD)No.1159 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)No.1159 of 2021
and
C.M.P(MD)Nos.11119 of 2021 & 5538 of 2022

The Oriental Insurance Company Ltd.,
Through its Branch Manager,
Branch Office,
Door No.39/40, Sradha Shopping Complex,
Simmakkal,
Madurai – 625 001.

... Appellant

Vs.

1.Raja Rajeswari

Muthulakshmi (Died)

*(2nd respondent name was amended as per order in I.A.No.
2286/2017 dated 07.06.2017)*

*(2nd respondent 's died amended as per order in I.A.No.20/2020,
dated 21.07.2020)*

2.K.Karthick

... Respondents

(2nd respondent remained exparte before the lower Court)



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 18.01.2021 passed in MCOP No.1291 of 2015 on the file of the Motor Accident Claims Tribunal-cum-Special Sub Judge, Tirunelveli.

For Appellant : Mr.C.Jawahar Ravindran
For Respondents : Mr.V.Sasikumar for R1
: No appearance for R2

JUDGMENT

[Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**]

The Insurance Company has come up with this appeal assailing the award of the Motor Accident Claims Tribunal, Special Sub Judge, Tirunelveli made in MCOP No.1291 of 2015, dated 18.01.2021.

2. Facts of the case:

This is a case of the fatal accident. The case of the first respondent/claimant is that on 05.05.2015 at about 17.00 hours, the deceased namely S.Sri Devanand was riding his motorcycle bearing Reg.No.TN-48-C-7374 in Madurai



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to Theni Main Road and when he was trying to turn to the northern side to reach his room where he was staying with proper indicator, the appellant insured two wheeler bearing registration No.TN-58-AJ-4881 was ridden by the second respondent with rash and negligent manner and dashed the deceased two wheeler and hence, he was thrown away from the motor cycle and sustained grievous injuries and died on the spot itself. The accident had happened due to the rash and negligent riding of the second respondent herein. A criminal case has also been registered against the second respondent herein. The first respondent is the wife of the deceased. She filed the claim petition claiming compensation of Rs. 1,00,00,000/-.

3. The appellant/Insurance Company in their counter disputed the manner of accident and its liability to pay the compensation. According to the appellant, the accident had occurred only due to the negligence of the deceased himself and the deceased rode his bike using his cellphone without watching the oncoming vehicle and suddenly crossed right without any signal and fell down on the road. The deceased rode the bike without wearing helmet. It is stated that the claim is excessive.



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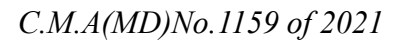
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4. The rider of the offending vehicle had also filed a counter, wherein, he has stated the deceased voluntarily invited the accident. The second respondent herein had valid driving license at the time of accident and his vehicle was insured with the appellant/Insurance Company.

5. To substantiate the case, on the side of the claimants, P.Ws.1 to 3 were examined and Exs.P1 to Ex.P.20 were marked. On the side of the appellant/Insurance Company and the second respondent herein, no one was examined and no document has been produced.

6. Finding of the Tribunal:

The Tribunal, after considering the oral and documentary evidence, held that the second respondent was responsible for the accident and the appellant is liable to pay the compensation to the claimant and awarded the compensation of Rs.64,80,925/- to the claimant under the following heads:-



Assailing the award, the appellant/Insurance Company has filed the present appeal.

7. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials available on record. No representation for the second respondent.

8. This appeal has been filed only challenging the negligence and quantum.

Therefore, the points for determination in this appeal are :-



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(i) Whether the negligence fixed by the Tribunal on the second respondent is correct or not?

(ii) Whether the liability fixed by the Tribunal on the appellant is correct or not?

(iii) Whether the quantum of compensation awarded by the Tribunal is correct or not?

9. According to the appellant/Insurance Company, the deceased rode his bike using his cellphone without watching the upcoming vehicle and suddenly crossed right without signal and fell down on the road.

10. Discussion on the negligence:

P.W.2 deposed that on 05.05.2015 at 17.00 hours, the deceased was riding his two wheeler preceding him at a distance of 20 feet. At that time, the second respondent came in the said road in a rash and negligent manner and dashed the two wheeler of the deceased without noticing the indicator of the deceased's two wheeler. He took the deceased and informed the deceased's brother-in-law. The



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brother-in-law of the deceased gave the complaint against the second respondent.

The N.Kottai Police Officers registered the case against the second respondent in Crime No.204 of 2015 under Sections 279 and 304(A) I.P.C., and the FIR was marked as Ex.P.1 and they completed investigation and filed the final report against him. The said evidence of independent witness P.W.2 is cogent and there was no contra evidence adduced on the side of the insurance company. Therefore, the contention of the learned counsel for the appellant insurance company that accident happened due to the negligence of the deceased cannot be accepted. The learned Tribunal Judge has correctly appreciated the evidence of P.W.2 without any infirmity and held that the accident happened due to the rash and negligent act of the second respondent. We are of the view that the negligence fixed on the second respondent by the Tribunal is correct. Therefore, the first point is answered accordingly.

11. Discussion on the liability:

Insofar as the liability is concerned, the second respondent is negligent and responsible for the accident and also the owner-cum-rider of the offending vehicle bearing Registration No.TN 58 AJ 4881 and the said vehicle has been



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insured with the appellant/Insurance Company. The second respondent remained exparte. Hence, the Tribunal fixed that the appellant insurance company is liable to pay the compensation to the claimant. We are of the view that the Tribunal has rightly fixed the liability on the appellant/Insurance Company. Hence, the second point is answered accordingly.

12. Discussion on quantum:

The claimant has deposed that the deceased was working as 'Area Sales Manager' in the Watertec (India) Pvt. Ltd., at Coimbatore and earning Rs.47,342/- per month. To prove the said contention, she has produced Bank Passbook (Ex.P. 7), Income Tax Assessment for year 2010-2015 (Ex.P.8 to Ex.P.12), appointment order (Ex.P.17) and Salary slips of the deceased (Exs.P18 to 20). Besides, the claimant has examined P.W.3, who is the staff of the company, in which, the deceased was working. The Tribunal by considering the above said exhibits, has correctly fixed the monthly income of the deceased as Rs.47,342/-.

12.1. Further, the Tribunal fixed the compensation to the claimant as per the following Judgments of the Honourable Supreme Court :-



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(i) In the case of *Sarla Verma and others vs. Delhi Transport Corporation and another* reported in **2009(2) TNMAC 1 (SC)**

(ii) In the case of *National Insurance Company Ltd., vs. Pranay Sethi and others* reported in **2017(2) TNMAC 609 (SC)**.

12.2. In the Ex.P.6 Driving Licence of the deceased, the date of birth is mentioned as 30.06.1974. Hence the age of the deceased is 40 years 10 months. If the deceased worked in an unorganized sector or a Labourer, if his age is 40 years at the time of death, then 25% of the income should be added under the head of future prospects as per the *Pranay Sethi case*. The multiplier for the age of 40 would be 15 and the deduction has to be 1/3rd for the personal expenses of the deceased in view of the dependent of the deceased as per the *Sarala Varma case*.

12.3.Calculation of the amount:

- | | |
|--|--------------------|
| (i) Monthly Income of the deceased | = Rs. 47,342.00/- |
| (ii) Future Prospects at 25% (47342 + 11835.50) | = Rs. 59,117.50/- |
| (iii) Annual Income of the deceased (59117.50 X 12) | = Rs.7,10,130.00/- |



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(iv) Deduction of Income Tax

Out of total income	= Rs.7,10,130.00/-	
Rs.2,50,000/- (Nil)		
Rs.2,50,000/- X 10%	= Rs. 25,000.00/-	
Rs.2,10,130/- X 20%	= Rs. 42,026.00/-	
(Rs.25,000/-+ Rs.42,026/-)=	Rs. 67,026.00/-	
I.T.cess 3%	= Rs. 2,010.78/-	
[Rs.67,026/-+Rs.2,010.78/-]		= Rs. 69,037.00/-

(v) Total income after deduction of income tax

Rs.7,10,130/- - Rs.69,037/-	= Rs. 6,41,093.00/-
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(vi) 1/3rd deducted as personal expenses

Rs.6,41,093/- - Rs.2,13,698/-	= Rs. 4,27,395.00/-
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(vii) Compensation after multiplier of 15

Rs.4,27,395/- X 15	= Rs.64,10,925.00/-
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Loss of Income = Rs.64,10,925/-

12.4. Further, the customary quantum of compensation under remaining heads were fixed by the Tribunal by following the above said Judgments is as follows:-



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Heads	Amount in Rupees
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Loss of Consortium	Rs.40,000/-

12.5. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference. Hence, the third point is answered accordingly.

13.Conclusion:-

For the foregoing reasons, the compensation awarded by the Tribunal under the heads are enumerated hereunder:-

Sl.No.	Heads	Amount awarded by the Tribunal
1	Loss of Income	Rs.64,10,925/-
2	Loss of Estate	Rs. 15,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Loss of Consortium	Rs. 40,000/-
Total Compensation Awarded		Rs. 64,80,925



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13.1. We find no reason to interfere with the conclusion reached by the Tribunal. This appeal has no merit. Hence, this appeal is liable to be dismissed. Therefore, the amount awarded by the Tribunal and the rate of interest fixed by the Tribunal are confirmed.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The compensation awarded in M.C.O.P.No.1291/2015 on the file of the Motor Accident Claims Tribunal, Special Sub Judge dealing with MCOP Cases, Tirunelveli, dated 18.01.2021, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petitions are closed.

[V.B.S.,J.] [K.K.R.K.,J.]
29.02.2024

skn/sbn

NCC : Yes/No

Index : Yes / No

Internet : Yes

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To

- 1.The Motor Accident Claims Tribunal-cum
-Special Sub Judge, Tirunelveli.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.
and
K.K.RAMAKRISHNAN, J.

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JUDGMENT MADE IN
C.M.A(MD)No.1159 of 2021
and
C.M.P(MD)Nos.11119 of 2021 &
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Dated:29.02.2024