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CMA.(MD)No.250 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No.250 of 2021

and

CMP (MD) No.2125 of 2021

M/s.IFFCO TOKIO General Insurance
Company Ltd.,
Represented by its Authorized Signatory,
KBS Arcade No.2, 2nd Floor, 4/1044,
Kovai Main Road,
Karur Town,
Karur Taluk and District. : Appellant/2nd Respondent

Vs.

1.K.Vasuki
2.Minor K.Selvakumar
Represented by his next
friend Natural Guardian
and Mother K.Vasuki
3.K.Vanitha
4.A.K.Karuppanna Gounder : Respondents 1 to 4/
Petitioners
5.R.Kannan : 5th Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under
section 173 of the Motor Vehicles Act, 1988, to set aside
the judgment and decree, dated 18/10/2019 passed in MCOP
No.259 of 2017 on the file of the Motor Accident Claims
Tribunal/Principal District Judge, Karur.

For Appellant : Mr.V.Sakthivel

For Respondents : No appearance



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O R D E R

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This Civil Miscellaneous Appeal is filed seeking to set aside the judgment and decree, dated 18/10/2019 passed in MCOP No.259 of 2017 by the Motor Accident Claims Tribunal/Principal District Judge, Karur.

2.The facts in brief:-

On 09/12/2016 at about 05.15 pm, the deceased Kanagaraj was riding his two wheeler bearing registration No.TN-59-BZ-1554 on the Pallappatti to Edayakottai main road from north to south. When he was nearing the occurrence place, the first respondent, who was riding the two wheeler bearing registration No.TN-57-AW-3580 came in a rash and negligent manner, dashed against Kanagaraj. Kanagaraj sustained injuries, taken to the hospital and died on 22/12/2016. At the time of the occurrence, he was aged about 49 years and he was a cattle merchant. Seeking compensation amount of Rs.30,00,000/- the wife, the children and the father filed the petition.

3.That was resisted by the Insurance Company stating that the deceased was riding his two wheeler without proper driving licence. He only hit the first respondent's vehicle and invited the occurrence and other



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customary denials were made. Apart from that, it is also stated that the first respondent's vehicle did not have any fitness certificate and the rider is not having driving licence.

4.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 21 documents marked. On the side of the Insurance Company, one witness was examined and no document was marked.

5.At the conclusion of enquiry, the Tribunal came to the conclusion that the occurrence took place due to rash and negligent driving on the part of the first respondent. Regarding the compensation, it fixed at Rs.20,86,000/- as per tabulation given hereunder:-

Loss of Income	Rs.14,85,000/-
Loss of consortium	Rs. 40,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Loss of love and affection	Rs. 2,00,000/-
Medical and Transport expenses	Rs. 3,31,000/-
Total	Rs.20,86,000/-

6.Against which, this appeal is preferred.

7.Heard the learned counsel appearing for the appellant and perused the materials available on record.



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8.The learned counsel appearing for the appellant would submit that the deceased was not having any proper driving licence. Apart from that, he was also not wearing the helmet. Because of these lapses, he contributed to the occurrence, which was not properly considered by the Tribunal. With regard to the quantum, it is submitted that for the loss of love and affection portion, Rs.2,00,000/- was awarded by the Tribunal. According to him, it is excessive and already the wife was awarded consortium amount of Rs.40,000/-. So, once again she is not entitled to the compensation under the head of loss of love and affection category. So in total, the Tribunal ought to have awarded Rs.1,20,000/- towards the parental consortium to the childrens and the father. For the children and the father to that extent, he wants modification.

9.Now let us turn to the point No.1. Even at the time of admission, this observation is made:-

"2.This appeal has been filed challenging the negligence as well as the quantum fixed against the appellant/insurance Company. It is the contention of the learned counsel for the appellant that though the deceased did not possess valid driving licence,



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only based on FIR, the trial Court has fixed the negligence jointly and severally on the part of the on the part of the owner and insurer. However, the Tribunal found that P.W.2 who was said to be the eye-witness to the occurrence was the son-in-law of the deceased Kanagaraj, but as there is no any tangible or rebuttal evidence on the side of the second respondent against the manner of accident stated by the petitioners. Therefore, based on the evidence of P.W.2, the Tribunal held that the accident took place only due to rash and negligent driving of the two wheeler by the first respondent where I do not find any infirmity."

10.In view of the finding made by this court, the first point cannot be re-canvassed, since that portion of the argument was already rejected.

11.Regarding the quantum, except the portion of the love and affection, there is no serious argument on the side of the appellant in respect of other categories.

12.At the time of admission, it was submitted by the appellant that the Tribunal ought to have fixed Rs.15,000/- as the notional income for the deceased.



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13.As per the evidence on record, the Tribunal relied upon Exs.P6 to P12. Ex.P6 is the Commissioner report. Other documents are land documents. The Tribunal has taken the notional income at Rs.15,000/-. Considering the age of the deceased, that amount was fixed by the Tribunal. At the age of 49 not only from the agricultural operation, but also from selling of vegetables substantial amount would have been earned by the deceased. So, fixing the amount of Rs.15,000/- per month at the rate of Rs.500/- per day even will match the minimum wages prescribed for the agriculturist. So, I find absolutely find no reason to differ from the above fixation of the monthly income.

14.I find that only modification is required in this matter to the total amount of Rs.20,06,000/- and consequently, the shares are re-allotted to the parties in the proportionate made by the Tribunal as per the tabulation given hereunder:=

Head	Award of the Tribunal	Award of this Court
Loss of income	Rs.14,85,000/-	Rs.14,85,000/-
Loss of consortium	Rs. 40,000/-	Rs. 40,000/=
Loss of estate	Rs. 15,000/-	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
Loss of love and affection	Rs. 2,00,000/-	-



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Medical and Transportation expenses	Rs. 3,31,000/-	Rs. 3,31,000/-
Filial consortium	-	Rs. 80,000/-
Parental consortium	-	Rs. 40,000/-
Total	Rs.20,86,000/-	Rs.20,06,000/-

15. With the above said modification, this Civil Miscellaneous Appeal is **partly allowed**. The award of the Tribunal is modified as Rs.20,06,000/-. The appellant Insurance Company is liable to pay the modified award amount of Rs.20,06,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with proportion costs. The claimants are entitled to get their respective shares as per the apportionment of the Tribunal. Excess amount if any available, the Appellate Insurance Corporation is entitled to get back the same from the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

18/04/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
Special District Judge,
Trichy.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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