



C.M.A.(MD).No.682 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2024

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THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.682 of 2022

The Branch Manager,
M/s.United India Insurance Company Limited,
No.903/1, Tenkasi-Madurai Main Road,
Near Panchayat Union Office,
Kadayanallur – 627 751,
Tirunelveli District. ... Appellant / 2nd Respondent

Vs.

1.Lakshmi
2.Velladurai ... Respondents 1 and 2/Petitioners
3.Manickam ... 3rd Respondent/1st Respondent
4.Velusamy ... 4th Respondent/3rd Respondent
5.The Branch Manager,
National Insurance Company Limited,
91-A, First Floor,
Veerappapuram Street,
Kallidaikurichi,
Tirunelveli District. ... 5th Respondent/4th Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award dated 31.01.2022 made in M.C.O.P.No.239 of 2019 on the file of the Motor Accidents Claims Tribunal / Additional District Court (FTC), Tenkasi.



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For Appellant : Mr.I.Suthakaran
For Respondents : Mr.R.J.Karthik for R1 & R2
Mr.T.S.Mohammed Mohideen for R3
Mr.V.Sakthivel for R5
R4 – Exparte

JUDGMENT

This appeal has been directed against the award dated 31.01.2022 made in M.C.O.P.No.239 of 2019 on the file of the Motor Accidents Claims Tribunal / Additional District Court (FTC), Tenkasi.

2.The facts in brief:

On 06.10.2017 at about 10.45 a.m., the deceased was riding his two wheeler bearing Registration No.TN 76 L 9992 with a pillion rider, on the Madurai – Tenkasi Main Road. Near the place of occurrence a motor cycle bearing Registration No.TN 76 J 9514 was driven by its driver in rash and negligent manner, came in the opposite direction and hit the deceased's vehicle. On the way to the hospital, he died. Claiming compensation amount of Rs.30,00,000/-, the dependants of the deceased filed the claim petition.

3.This was resisted by the second and fourth respondents stating



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that the deceased died because of the rash and negligent driving on the part of himself; He came on the wrong side of the road and invited the accident; It is a head on conclusion; The deceased was also not owning valid driving licence.

4.Before the Tribunal on the side of the claimants two witnesses were examined and 18 documents were marked. On the side of the respondents, three witnesses were examined and 8 documents were marked.

5.At the conclusion of the enquiry, with regard to the aspect of the negligence, on the basis of the evidence of PW1 and PW2, the Tribunal concluded that because of the first respondent vehicle's driver's rash and negligent manner, the occurrence took place.

6.Regarding compensation, the age of the deceased was fixed at 17 years, since he was minor at the time of occurrence. The minor was not permitted to drive two wheeler. Hence, 20% of contribution was fixed upon him.



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7.The income was fixed at Rs.12,000/-. 18 multiplier was adopted. Total loss of dependency was fixed as Rs.23,32,800/-. To that loss of estate, funeral expenses, loss of love and affection were also added and finally after deducting 20% of the Contributory Negligence portion, it comes around Rs.20,50,000/-.

8.Against which, this appeal is preferred by the appellant/ Insurance Company stating that it is not a case of Contributory negligence, but absolute negligence on the part of the deceased. The liability fixed upon the appellant is not proper. The future prospects were added after deducting the personal expenses is not legal.

9.Per contra, it was contended by the appellant that the amount awarded towards the category of the filial consortium and love and affection are not proper. The respondents 1 and 2 submitted that he has no objection to reduce the quantum.

10.Regarding the negligence aspect as mentioned above, the



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Tribunal fixed 20% of contribution. It is not the case of composite negligence as projected by the appellant. It is a case of contributory negligence. The deceased was riding the two wheeler bearing Registration No.TN 76 L 9992. A TVS Star City Motor Cycle bearing Registration No.76 J 9514 was driven by its rider. Both proceeded in opposite directions. The victim was thrown in-front of the TATA Sumo bearing Registration No.TN 76 Q 1479, which was driven by the third respondent. The petitioner stated that a case was registered against the rider of the two wheeler bearing Registration No.TN 76 J 9514. In the petition, it is also stated that only because of the rash and negligent driving on the part of the rider of the two wheeler bearing Registration No.TN 76 J 9514, the accident took place.

11.Since the TATA sumo vehicle is involved they are also liable to pay the compensation, the compensation sought against all the respondents, according to the appellant.

12.But, the Tribunal on its finding, fixed the responsibility of negligence only upon the vehicle rider bearing Registration No.TN 76 J



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9514. Even though the counsel for the appellant would submit that it is a case of composite negligence, the manner in which the occurrence taken place clearly indicates that because of the hitting the deceased he was thrown in front of the TATA sumo car. So the direct cause for the occurrence is the first respondent's vehicle rider. So it was rightly fixed on the first respondent by the Tribunal. The contention on the part of the appellant is not sustainable. So accordingly, it is rejected.

13.Regarding the contributory negligence it was fixed as 80/20, because the deceased was not owning valid licence and moreover, he was a minor. It is head on conclusion. Because of the absence of licence, it is fixed at 20%. I find no reason to differ from the ratio fixed.

14.Regarding the payment of compensation, computation mistake has been made by the Tribunal. The monthly income was fixed at Rs. 12,000/-. Directly, half of the amount was deducted towards the personal expenses. Thereafter, 40% was added towards future prospectus. It is not correct. The future prospectus estimated as Rs.4,800/- must be added to Rs.12,000/-. It comes around Rs.16,800/-. From that half of the amount



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must be deducted towards personal expenses of the deceased. It comes to Rs.8,400/-. 18 multiplier was adopted. It was proper and there is no issue. (Rs.8,400 x 18 x 12 = Rs.18,14,400/-). So in total, the loss of dependency is Rs.18,14,400/-. Another mistake committed by the Tribunal is awarding Rs.2,00,000/- towards the loss of love and affection. For filial consortium, it should be fixed at the rate of Rs. 40,000/- for each. Totally Rs.80,000/- alone is entitled for love and affection. The award amount passed on other heads remain unchanged. Hence, the claimants are entitled for the compensation amount as follows:

<i>1.Loss of Dependency</i>	<i>- Rs.18,14,400.00</i>
<i>2.Loss of Estate</i>	<i>- Rs. 15,000.00</i>
<i>3.Funeral Expenses</i>	<i>- Rs. 15,000.00</i>
<i>4.Loss of Love and Affection</i>	<i>- <u>Rs. 80,000.00</u></i>
<i>Total</i>	<i>- <u>Rs.19,24,400.00</u></i>
<i>Less: Contributory Negligence @ 20%</i>	<i>- <u>Rs. 3,84,880.00</u></i>
<i>Total</i>	<i>- <u>Rs.15,39,520.00</u></i>

In total, the award passed by the Tribunal is modified to a sum of Rs.15,39,520/- (Rupees Fifteen Thousand Thirty Nine Five Hundred and Twenty only) with interest at the rate of 7.5% per annum.



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

The appellant/Insurance Company is directed to deposit the modified award amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization, after deducting the amount already deposited, if any. On such deposit being made, the respondents 1 and 2 are permitted to withdraw the amount equally as ordered by the Tribunal, after deducting the award amount already withdrawn, if any. This appeal stands dismissed as against the third and fourth respondents.

No costs.

12.06.2024

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

1. The Additional District Judge (FTC), Tenkasi. (Motor Accident Claims Tribunal)

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



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