



C.M.A(MD)No.41 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated :03.10.2024

CORAM

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

C.M.A(MD)No.41 of 2021
and
C.M.P.(MD).Nos.430 & 7763 of 2021

The Branch Manager,
The Oriental Insurance Company Limited,
having its officer at 1st Floor,
No./2851/35,
Kamala Subramaniam Arcade,
No.3607/21, II Floor,
Near Mary's Corner,
Sathiyamoorthi Road,
Kaspa Puthukottai,
Puthukottai District.

...Appellant

Vs.

1.Mrs.Gopina
2.Minor.Harshith
3.Malarkodi
4.Nagalingam
5.Mahendran
6.P.S.Sankar (Givenup)

...Respondents



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(Minor R2 is represented through their mother/next guardian, the first respondent)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree in M.C.O.P.No.112 of 2017 dated 30.04.2019, on the file of the Motor Accident Claims Tribunal cum III Additional District-cum-Sessions Court, Thanjavur @ Pattukottai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.C.M.Arumugam for R1 to R4
R5 Exparte.

J U D G M E N T

[Order of the Court was made by **K.K.RAMAKRISHNAN,J**]

The Insurance company filed this appeal challenging the quantum of the award passed in M.C.O.P.No.112 of 2017, dated 30.04.2019, by the Motor Accident Claims Tribunal cum III Additional District cum Sessions Court, Thanjavur @ Pattukottai.

2. The first respondent's husband, the second respondent's father and third respondent's brother, fourth and fifth respondent's son, filed the



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claim petition in M.C.O.P.No.112 of 2017, before the Motor Accident Claims Tribunal cum III Additional District cum Sessions Court, thanjavur @ Pattukottai, claiming compensation of Rs.4,00,00,000/- (Rupees Four crores only).

3.Facts of the case:

The deceased Maheshwaran was working in Bahrain in L.A.-Feara e.s.t. Company and was earning more than 620 Dinars to the value of Rs. 1,14,080/- Indian Money as monthly income. He came to India for the holidays. During his stay in India, he visited his aunt's house in the Village on 04.03.2017 at 07.00 pm., along with the another person (since deceased in the accident) and parked his vehicle in PattukottaiVadaseri Road, near Soorappallam Modern Matriculation School. The appellant Bus (having Vehicle Insurance) came in a rash and negligent manner and dashed against the victim and other person who were standing. In the result, both died on the spot and FIR was registered against the appellant insured driver under Crime No.54 of 2017. Subsequently, the legal heirs of both deceased filed the claim petition before the Tribunal in M.C.O.P.No.112 of 2017 and another M.C.O.P.No.155 of 2017. Both the



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claim petitions were clubbed together and common evidence was adduced.

3.1.The insurance company filed a counter denying the allegation stated in the petition and disputed the quantum and also denied the negligence on the part of the insured vehicle.

3.2.In order to prove the claim, the claimants examined with 3 witnesses as P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.22. On the side of the appellant insurance company, neither witness nor document was produced.

4.Finding of the Tribunal:

The learned Tribunal Judge after considering the independent evidence of P.W.3, fixed negligence on the part of the appellant insured vehicle. The learned tribunal judge, after considering the salary certificate/Ex.P6 of the deceased and considering the evidence of P.W.1, namely the wife of the deceased, arrived the income of the deceased as Rs.40,000/- per month and also applied the future prospects of 40% as



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per Pranay Sethi and determined the compensation as follows:-

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<i>Heads</i>	<i>Rs.</i>
Transportation Charges	5,000/-
Funeral Expenses	20,000/-
Loss of Estate	15,000/-
Loss of Consortium to the first respondent/wife of the deceased	40,000/-
Loss of income	85,68,000/-
Total	86,48,000/-

Assailing the said award, the appellant Insurance Company has filed the present appeal questioning the “quantum only”.

5.Submission of the learned counsel for the appellant insurance company:

The learned counsel for the appellant submitted that without examining the author of Ex.P6, the trial Court fixed the monthly income of Rs.40,000/- and the same was not in accordance with law. Hence he seeks to set aside the same and prays to fix the notional income of Rs. 15,000/- per month.



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6.Submissions of the learned counsel for the claimants:

On the other hand, the learned counsel for the respondents/claimants submitted that Ex.P6/salary certificate and passport of the deceased were marked. From the passport of deceased and Ex.P6, it is clear that he was permanently employed in the foreign country and his salary was more than Rs.1,14,000/-. But, the learned Tribunal Judge has only taken a sum of Rs.40,000/- per month and hence, the amount is very low. Therefore, there is no need to interfere with the same. Further, he submitted that Ex.P6 was marked without any objection. Even though P.W.1 has been cross examined, nothing was elicited to disbelieve Ex.P6.

7. This Court carefully considered the submissions of the learned counsel for the appellant insurance company and the learned counsel appearing for the respondents/claimants and perused the materials available on record.



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8. The following points arise for consideration of this appeal:

8.1. Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

8.2. Whether the learned tribunal Judge has correctly fixed the liability upon the insurance company?

9. Discussion on negligence:

The learned trial Judge considering the oral and documentary evidence and the registration of the FIR as against the driver of the appellant insured vehicle and the final report with a finding that the accident occurred due to the rash and negligence of the driver of the appellant insured vehicle and on appreciation of all other circumstances, has correctly fixed the negligence on the driver of the appellant insured vehicle and there is no contra evidence adduced to differ with the conclusion of the said finding of the learned tribunal Judge. Therefore, this Court confirms the finding of the learned Tribunal Judge that the accident happened only due to the negligence of the driver of the appellant insured vehicle.



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10.Discussion on quantum:

Since the appellant insurance company has not challenged the liability, negligence, this Court need not go into the said issues. They are disputing only the quantum namely the monthly income of the deceased. The deceased was working in Bahrain in L.A.Feara e.s.t. Company. as sales manager and to prove the same, Ex.P6 was produced. Apart from that, P.W.1 clearly deposed that his monthly salary was 620 Dinar and after deduction of 70 Dinar, he received 550 Dinar. To prove the same, Ex.P.6 was marked. P.W.6 was not objected by the appellant, during the course of the trial. Apart from that the work contract period was up to 23.09.2017. The learned Tribunal Judge, considering all the aspects, has taken Rs.40,000/- as monthly income. Hence, this Court finds no merit in the contention of the learned counsel for the appellant to further reduce of the monthly income fixed by the learned Trial Judge. The learned Tribunal Judge ought to have taken the entire income of Rs.1,14,000/-. But, without cross objection, this Court has no jurisdiction to look into the said aspect. This court perused the evidence of P.W.1 and Ex.P6. The same was in accordance with law and the evidence of P.W.1 is cogent and also Ex.P6 has not suffered any character of forgery. In the said



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circumstances, this Court finds no merits in the contention of the appellant and the learned Tribunal Judge has correctly considered all the aspects and accepted the same and taken Rs.40,000/- as monthly income and there is no ground to interfere with the said amount. Hence, the award passed by the learned Tribunal Judge is confirmed in all aspects.

11. Conclusion

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Transport Charges	5,000/-	5,000/-	confirmed
Funeral Charge	20,000/-	20,000/-	confirmed
Loss of Estate	15,000/-	15,000/-	confirmed
Loss of Consortium to the first respondent/wife of the deceased	40,000/-	40,000/-	confirmed
Loss of Income	85,68,000/-	85,68,000/-	confirmed
Total	86,48,000/-	86,48,000/-	confirmed

Accordingly, this Civil Miscellaneous Appeal is dismissed by confirming the award passed by the learned Tribunal Judge. The compensation awarded in M.C.O.P.No.112 of 2017 on the file of the



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Motor Vehicle Accidents Claims Tribunal cum III Additional District cum Sessions Court, Thanjavur, Pattukkottai, dated 30.04.2019 is hereby confirmed. The appellant/insurance company is directed to deposit the award amount with accrued interest and costs, less any amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

12. Apportionment of compensation:

The claimants are entitled to withdraw the compensation amount as apportioned by the Tribunal with respective proportionate accrued interest and costs by making necessary application before the Tribunal. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**[P.V.J.,] [K.K.R.K.J.,]
03.10.2024**

NCC : Yes/No
Index : Yes/No
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To
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- 1.TheMotor Vehicle Accidents Claims Tribunal cum III Additional
District cum Sessions Court,
Thanjavur, Pattukkottai,
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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