



CMA(MD)No.691 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.03.2024

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CMA(MD)No.691 of 2022
and
CMP(MD)No.6037 of 2021

The Branch Manager,
National Insurance Company Limited,
6, West Masi Street,
Madurai.

... Appellant

vs.

Minor D.Gowtham (died)

1. Dhanachamy
2. Jeyamari
3. S.Packiyam

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award in MCOP.No.740 of 2012 dated 10.01.2022 on the file of the Motor Accident Claims Tribunal, IV Additional Subordinate Court, Madurai.

For Appellant : Mr.J.S.Murali
For R2 : Mr.R.Santhanam
For R3 : No appearance



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J U D G M E N T

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(Judgment of the Court was made by K.K.RAMAKRISHNAN, J.)

The insurance company filed this appeal challenging the quantum of compensation as well as negligence.

2.On 08.08.2011 about 02.00 p.m., when the 1st claimant in the claim petition namely, Minor D.Gowtham was riding a Bajaj motorcycle bearing registration No.TN 64 A 7871 in Avaniyapuram main road, the 3rd respondent herein came in a Lorry bearing registration No.TN 67 Z 4569, behind the the 1st claimant's motorcycle in a rash and negligence manner and hit the motorcycle of the claimant, in which the minor claimant Gowtham sustained grievous injuries in the right thigh, right hand fingers, left shoulder and chest and backside of the head. Immediately, he was admitted in the Government Rajaji Hospital, Madurai, where, his leg was amputated and after taking treatment, the injured claimant was discharged from the hospital. The injured claimant filed claim petition seeking compensation for the injuries sustained by him. Pending claim petition, the injured claimant died and his father and mother were impleaded as petitioners 2 and 3 in the claim petition.



According to the parents of the injured claimant, due to the injuries, their son died after two years of the accident and therefore, they claimed compensation of Rs.10 Lakhs.

3.The appellant insurance company contested the claim petition contending that the injured claimant was responsible for the accident. In the hospital records, it is stated that the injured claimant sustained injury while crossing the road and being hit by a two wheeler. Therefore, the involvement of the Lorry insured with the appellant is highly doubtful and the Lorry was falsely implicated in the case. Further, there is no nexus between the injuries sustained by the injured in the accident and the cause of his death. Apart from the above, the appellant also disputed the compensation claimed under various heads. Hence, they sought for dismissal of the claim petition.

4.To prove the claim, apart from the 3rd claimant/mother of the deceased who was examined as PW1, two other witnesses were examined as PW2 and PW3 and Exs.P1 to P8 were marked. Through PW2, Ex.X1-treatment records of the injured claimant, was marked. The appellant did not let in any oral or documentary evidence.



5.The Tribunal considered the submissions, oral and documentary evidence and came to the conclusion that the Lorry insured with the appellant was responsible for the accident. However, considering the fact that the injured claimant did not possess driving licence to ride the motorcycle, the Tribunal apportioned the negligence in the ratio of 90 : 10 as between the appellant and the injured claimant. As far as the quantum of compensation, the Tribunal has taken into consideration the notional income fixed by the Hon'ble Supreme Court for vegetable vendor and fixed the monthly income of the deceased at Rs.6,500/-. Considering the fact that the injured claimant's right leg above knee was amputated and he was a construction labour by avocation, the Tribunal held that the occupational disability of the injured claimant is 100%. After adding 40% towards future prospects and applying multiplier of 18, the Tribunal calculated the loss of income at Rs.18,14,400/-. Apart from the above, Rs.5,000/- towards medical expenditure, Rs.3,000/- towards transportation, Rs.25,000/- towards extra nourishment and Rs.10,000/- towards attendant charges was awarded. Altogether, a sum of Rs.18,57,400/- was awarded as total compensation to the claimants with 7.5% interest per annum from the date of petition till the date of realisation. Challenging the negligence and quantum, the insurance



company has filed this appeal.

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6.Learned counsel for the appellant submitted that in Ex.X1-treatment records of the injured claimant, it is mentioned that, "Alleged H/o RTA while crossing road hit by two wheeler at Mandala Nagar, on the way to Madurai airport on 08.08.2011 around 2.45 pm sustained injury". There is nothing in Ex.X1, to implicate the Lorry insured with the appellant, but the Tribunal did not consider the said document while deciding negligence and erroneously held that the Lorry insured with the appellant was responsible for the accident. Learned counsel further submitted that the Tribunal erred in taking 100% occupational disability when 70% disability was assessed by the Doctor. Hence, he seeks for reduction of the compensation.

7.Learned counsel for the respondents/claimants submitted that the Tribunal has rightly held that the author of Ex.X1 was not examined to prove its contents which were given by a third party. He further submitted that the Tribunal considering the amputation of right leg and avocation of the injured claimant correctly fixed the quantum of compensation which does not require interference by this Court.

8.We have considered the rival submissions and also perused the documentary evidence marked before the Tribunal and also perused the



impugned judgment of the Tribunal.

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9.The following points arise for consideration in this appeal:

9.1.Whether the negligence is correctly fixed on the offending Lorry?

9.2.Whether the compensation granted is in accordance with law?

10.Though the learned counsel for the appellant contended that in Ex.X1-accident register, it is stated that while the injured was crossing the road, the accident has happened and without considering the same, the Tribunal erroneously fixed the negligence on the Lorry driver, this Court is unable to accept the said contention on the ground that the entry made in the accident register need not be taken into account as per the law laid down by the Hon'ble Supreme Court and this court, in the case of *P.Babu vs. State of A.P., (1994) 1 SCC 388 : 1994 SCC (Cri) 424*, In the case of *B.Bhadriah vs.State of A.P., 1995 Supp (1) SCC 262*, and in the case of *Annamalai vs. State by Sub Inspector of Police, Thiruppathur Police Station reported in (2007) 1 MLJ (Crl) 319*. Further, there is no other evidence to the effect that while the injured was crossing the road, the accident had happened, as such, Ex.X1 is not corroborated by any other evidence. More importantly, the author of Ex.X1 was not examined to prove its contents. Thus, the Tribunal rightly held that the Lorry insured with the appellant was responsible for the



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accident. Testing the finding of negligence on the principles of preponderance of probability, this Court finds no infirmity or perversity warranting its' interference. Accordingly, the finding of the Tribunal regarding negligence is confirmed.

11.As regards the quantum of compensation is concerned, though the Doctor has assessed the disability of the injured claimant as 70%, the Tribunal taking into consideration the amputation of right leg above knee fixed the occupational disability at 100%. The opinion of the experts cannot be found fault with unless evidence contrary thereto is adduced. In this case, no such evidence is adduced. Therefore, it is not proper on the part of the Tribunal to fix the percentage of disability at 100%. Hence, this Court is inclined to fix the percentage of disability at 70% as assessed by the Doctor. Accordingly, the loss of income is computed at Rs.12,70,080/- [Rs.8400 x 12 x 18 x 70/100]. The award under others heads, which are not in dispute, are confirmed.

12.The total compensation is modified and apportioned as hereunder:-



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Loss of income	=	Rs.12,70,080/-
Medical expenditure	=	Rs. 5,000/-
Transport charges	=	Rs. 3,000/-
Extra nourishment	=	Rs. 25,000/-
Attendant charges	=	Rs. 10,000/-
Total	=	Rs. 13,13,080/-
(Less) Award of the Tribunal	=	Rs. 18,57,400/-
Reduction	=	Rs. 5,44,320/-

13.In the result there shall be a reduction on the quantum of Rs.5,44,320/-. Deducting 10% of negligence on the part of the deceased, the claimants are entitled to reduce compensation of Rs.11,81,772/-. Vide order dated 19.07.2022 in CMP(MD)No.6037 of 2022, this Court has directed the appellant to deposit 60% of the quantum of compensation as a condition precedent for granting interim stay. In view of the disposal of this appeal, the appellant is directed to deposit the reduced compensation of Rs.11,81,772/-, less the amount already deposited, within a period six weeks from the date of receipt of a copy of this judgment. The respondents/claimants are entitled to withdraw the modified compensation of Rs.11,81,772/- in the ratio apportioned by the Tribunal along with proportionate accrued interest and costs, by making necessary application before the Tribunal.



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WEB COPY 14.In the result, the Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S., J.) (K.K.R.K., J.)

05.03.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The IV Additional Subordinate Judge,
Motor Accident Claims Tribunal, Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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JUDGMENT MADE IN
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