



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.595 of 2019
and
Cross Obj (MD) No.5 of 2020
and
C.M.P(MD) Nos.7244 and 10096 of 2019

C.M.A.(MD) No.595 of 2019:

The New India Assurance Company Limited,
Through its Branch Manager,
North Car Street,
Nagercoil,
Kanyakumari District.

... Appellant/4th Respondent

-vs-

1. N.Chidambaradhanu Pillai

2. Santhakumari

... Respondents 1 and 2
/ Petitioners 1 and 2

3. Selvaraj

4. Abraham Jeya

5. Ayyamperumal Pillai

... Respondents 3 to 5/
Respondents 1 to 3

(Memo dated 05.02.2024 in U.S.R.No. 4477 is recorded, to the effect that issuance of notice to 3rd respondent is dispensed with, as he was set *ex-parte*



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

before the Tribunal, vide order dated
06.02.2024 made in C.M.A.(MD) No.595
of 2019)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 15.02.2019 passed in M.C.O.P.No.46 of 2017, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagercoil.

For Appellant : Mr.G.Prabhu Rajadurai

For R1 and R2 : Mr.M.P.Senthil

For R-4 and R-5 : No appearance
For R3 : Dispensed with

Cross Obj.(MD) No.5 of 2020:

1. N.Chidambaradhanu Pillai

2. Santhakumari

... Cross Objectors
/ Respondents 1 and 2

-vs-

1. The New India Assurance Company Limited,
Through its Branch Manager,
North Car Street,
Nagercoil,
Kanyakumari District.

...1st Respondent/ Appellant

2. Selvaraj



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

3. Abraham Jeya

4. Ayyamperumal Pillai

... Respondents 2 to 4/
Respondents 3 to 5

PRAYER: Cross Appeal filed under Order 41 Rule 22 of Civil Procedure Code, against the judgment and decree passed in M.C.O.P.No.46 of 2017, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagercoil, dated 15.02.2019, and the Memorandum of Grounds was served of the Respondents 1 and 2/Cross objector on 28.08.2019.

For Cross Appellants : Mr.M.P.Senthil

For R1 : Mr.G.Prabhu Rajadurai

COMMON J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Nagercoil, in M.C.O.P.No.46 of 2017, on the ground of negligence, liability and quantum.

2. According to the claimants, the deceased was travelling as a pillion rider in a two wheeler, which was driven by the third respondent in the claim petition and insured with the fourth respondent/Insurance Company. At that



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

point of time, a Tempo driven by the first respondent and owned by the second respondent came from the opposite direction and dashed against the two wheeler. Due to the said impact, the pillion rider had passed away.

3. According to the claimant, the pillion rider was aged about 28 years, and he was an Electrician as well as an Agriculturist and he was earning a sum of Rs.12,500/- as an Electrician and a sum of Rs.30,000/- (Rupees Thirty Thousand only) per year carrying out agricultural activities. The claimants have prayed for a compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only).

4. The Insurance Company has filed a counter admitting the subsistence of the Insurance Policy for the two wheeler. But they have contended that there is no statutory liability on pillion rider on the ground that it is only an Act Policy. They have further contended that the accident has taken place only due to the rash and negligent driving on the part of the Tempo driver and they are not responsible to pay the compensation amount.

5. The Tribunal, after considering the oral and documentary evidence,



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

arrived at a finding that the rider of the two wheeler on seeing the Tempo coming from the opposite direction had applied sudden brake and the two wheeler got skid and the pillion rider had fallen down and sustained grievous injuries and passed away. Therefore, the finding of the Tribunal was to the effect that the accident has taken place only due to the rash and negligent driving on the part of the rider of the two wheeler. The Tribunal has fixed the notional income of the deceased at Rs.10,000/- (Rupees Ten Thousand only) per month and arrived at a total compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only). Challenging the said award, the present appeal has been filed by the Insurance Company.

6. According to the learned counsel appearing for the appellant/ Insurance Company, the Tribunal has erroneously fixed the negligence on the part of the rider of the two wheeler. In fact, the pleadings are to the effect that only the Tempo was driven in a rash and negligent manner and the driver of the said Tempo was responsible for the said accident. He further contended that the quantum of amount awarded under various heads are excessive in nature and he prayed for reducing the quantum of compensation as awarded by the Tribunal.



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

WEB COPY

7. Per contra, the learned counsel appearing for the respondents 1 and 2/ claimants had contended that the Tribunal has rightly fixed the liability upon the rider of the two wheeler. He further contended that they have filed a Cross Objection seeking enhancement of the compensation. He relied upon the Division Bench judgment of our High Court reported in **(2018) 2 TANMAC 783 (United India Insurance Company Limited – vs. Natarajan)** to contend that the Tribunal was not right in fixing the notional income at Rs.10,000/- (Rupees Ten Thousand only) per month and it ought to have fixed the notional income at Rs.12,000/- (Rupees Twelve Thousand only) per month. He further contended that when there are two claimants, the Tribunal was not right in awarding a sum just Rs.40,000/- (Rupees Forty Thousand only) towards loss of love and affection. Hence, he prayed for enhancing the compensation.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. As rightly pointed out by the Tribunal, relying upon Ex.P3 and



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

Ex.P.4 -Motor Vehicle Inspector Reports and the oral evidence, the accident has taken place only due to the negligence on the part of the rider of the two wheeler. Therefore, there cannot be any dispute that the insurer of the two wheeler is liable to pay the compensation. Though the Insurance Company had contended that they are not liable to pay the compensation for the pillion rider, they have not chosen to file a copy of the Insurance Policy before the Tribunal. The said policy has been produced before this Court by the learned counsel appearing for the Insurance Company. A perusal of the said policy indicates that it is a package policy covering the period between 18.11.2013 and 17.11.2014. Therefore, it is clear that the package policy was in subsistence on the date of accident and the pillion rider is covered in the said policy. Therefore, the Insurance Company is liable to pay the compensation on behalf of the owner of the two wheeler.

10. The deceased person is a Diploma Holder in Electrical Engineering. The Tribunal has proceeded to fix the notional income at Rs.10,000/- per month. The learned counsel appearing for the Cross Objectors has relied upon the judgment of the Hon'ble Division Bench of our High Court reported in ***(2018) 2 TANMAC 783 (United India Insurance Company Limited – vs. Natarajan)***, wherein, the Hon'ble Division Bench had fixed the notional



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

income at Rs.12,000/- (Rupees Twelve Thousand only) per month for the accident that had taken place in the year 2013. In the present case, the accident has taken place in the year 2014. This Court is inclined to follow the judgment of the Hon'ble Division Bench of our High Court as far as the present case is concerned, and enhance the monthly income at Rs.12,000/- (Rupees Twelve Thousand only) per month adding 40% towards future prospects, since the deceased being a self employed and aged about 29 years. The Multiplier of "17" applied is also correct. The Tribunal has rightly reduced 50% towards personal expenses, in view of the fact that the deceased is a bachelor.

11. In view of the above said discussions, the award of the Tribunal is reassessed as follows:

Loss of Income	: Rs.17,13,600/-
Loss of Estate	: Rs. 15,000/-
Loss of Love and Affection (2 claimants)	: Rs. 80,000/-
Funeral Expenses	: Rs. 15,000/-
Transport Charges	: <u>Rs. 2,000/-</u>
Total	: Rs.18,25,600/-



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

WEB COPY

12. The award of the Tribunal is enhanced from Rs.15,00,000/- (Rupees Fifteen Lakhs only) to Rs.18,25,600/- (Rupees Eighteen Lakhs Twenty Five Thousand and Six Hundred only). The award amount shall carry interest at the rate of 7.5% from the date of filing of the claim petition. The balance award amount shall be deposited by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the said amount at the proportion fixed by the Tribunal.

13. In fine, the Civil Miscellaneous Appeal filed by the Insurance Company stands dismissed. The Cross Objection filed by the claimants stands partly allowed, to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

21.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

WEB COPY

1. The Motor Accident Claims Tribunal
(Chief Judicial Magistrate),
Nagercoil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

ebsi

C.M.A(MD)No.595 of 2019
and
Cross Obj (MD) No.5 of 2020
and
C.M.P(MD) Nos.7244 and 10096 of 2019



WEB COPY



C.M.A.(MD).No.595 of 2019 and
Cross Obj(MD) No.5 of 2020

21.06.2024