



C.M.A.(MD).No.863 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 31.07.2024

DELIVERED ON : 21.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.863 of 2021
and C.M.P.(MD).No.8078 of 2021

M/s.National Insurance Company Limited,
Branch Office II,
Jerome Building,
First Floor,
Fort Station Road,
Trichy.

... Appellant/Respondent No.4.

Vs.

Moorthy (Died)

1.M.Vembu

2.M.Balasubramanian

3.M.Kesavamani

4.M.Kubendramani

... Respondent Nos.1 to 4/Petitioners

5.C.Savithiri

... Respondent No.5/Respondent No.1

6.M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
No.46, Whites Road,
Chennai.

... Respondent No.6/Respondent No.2

7.S.Kalliappan

... Respondent No.7/Respondent No.3



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PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and decree passed in M.C.O.P.No.3800 of 2013 on the file of MACT/Special District Court, Trichy.

For Appellant : Mr.P.Malini

For Respondents : No Appearance

JUDGMENT

This appeal has been directed against the Judgment and decree passed in M.C.O.P.No.3800 of 2013 on the file of MACT/Special District Court, Trichy.

2.The facts in brief:

On 28.07.2004, the deceased Selva Ganapathy was driving his container lorry bearing Registration No.TN 37 V 5469, from Thirupur to Chennai, when the lorry was nearing the Forest Department Nursery, another vehicle bearing Registration No.TN 37 Y 4930, which belongs to the first respondent in the main petition, suddenly turned to right. The deceased did not expect such sudden crossing. There was an accident and the lorry capsized. He died on the spot.



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3.He was aged about 26 at the time of occurrence. He was earning not less than Rs.6,500/- per month, not only from doing driving work, but also from agricultural operation works and he was also an LIC agent. So he was earning not less than Rs.10,000/- per month. So claiming compensation amount of Rs.20,00,000/-, the claim application was filed before the Tribunal.

4.That was resisted by the second respondent in main petition namely M/s.Royal Sundaram Alliance Insurance Co. Ltd., contended that the occurrence took place because of the rash and negligent driving on the part of the deceased himself. The first respondent's vehicle's driver was not responsible for the occurrence and other customary denials are made.

5.The fourth respondent namely the National Insurance Company filed the counter stating that the occurrence took place because of the rash and negligent driving on the part of the first respondent's vehicle's driver in the main petition. So the first and second respondents alone



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responsible to pay the compensation amount. Another contention raised that the claimants filed another petition in M.C.O.P.No.1195 of 2005 and other customary denials were made.

6.So the Tribunal recorded a finding of fact with regard to the first aspect of negligence that both the vehicle drivers namely the deceased as well as the first respondent's vehicle's driver are equally responsible for the occurrence and the contributory negligence was fixed as 50% and 50%.

7.Regarding the compensation, the age of the deceased was fixed as 27. The monthly income was fixed as Rs.3,750/- per month. To that 40% of future prospects was added and finally it fixed the monthly income as Rs.5,250/- and half of the amount was deducted towards personal living expenses. Totally the loss of dependency was fixed as Rs.2,625/-. Multiplier 17 was adopted and total loss of dependency was fixed as Rs.5,35,500/-. To that other customary amounts were added as noted below.



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1.Loss of Dependency	- Rs.5,35,500/-
2.Transport Charges to Hospital	- Rs. 7,000/-
3.Parental Consortium	- Rs.1,40,000/-
4.Funeral Expenses	- Rs. 10,000/-
5.Loss of Estate	- Rs. 10,000/-
Total	- Rs.7,02,500/-

8.Finally directed the payment of 50% of compensation amount by the first respondent namely the owner of the vehicle and 50% by the third and fourth respondents. Against which, this appeal is preferred by the National Insurance Company, who is the fourth respondent before the Tribunal.

9.The learned counsel for the appellant would submitted that even as per the finding recorded by the Tribunal, this is a case of Contributory Negligence. By invoking the provision of Workmen Compensation Act, the Tribunal directed the first and second respondents to pay 50% of the compensation amount and remaining 50% is ordered to be paid by the appellant on behalf of the third respondent before the Tribunal. But, no



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appeal is preferred by other claimants or by the first and second respondents before the Tribunal. The appeal is preferred only by National Insurance Company, who is the fourth respondent before the Tribunal, the insurer of third respondent in the main petition.

10.All the respondents remained un-represented, even though served with notice. Heard the learned counsel for the appellant.

11.At the outset clarification was sought from the learned counsel for the appellant as to the counter made by them before the Tribunal, wherein, it has been mentioned that the claimants filed another application before the Tribunal in M.C.O.P.No.1195 of 2005. But, on verification of the records, it was informed by the appellant's counsel that no such another claim application has been filed by the claimants before any other Tribunal. So that issue does not arise now.

12.The learned counsel for the appellant would submit that the trial Court ought not to have undertaking the exercise of assessing the compensation by invoking the provisions of Workmen Compensation



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Act. Neither Section 166 nor Section 163(A) of the Motor Vehicle Act will attract to the present circumstances of the case. In the grounds of appeal only the negligent aspect has been projected apart from the application of Section 167 and 166 of the Motor Vehicles Act to the subject claim.

13.No doubt that the Tribunal has committed a mistake in directing the first respondent herein to pay 50% of the claim amount namely the owner of the vehicle driven by the deceased. But as mentioned above no appeal was preferred by the owner of the vehicle driven by the Driver. Even the insurer of the first respondent before the Tribunal does not file any appeal. They are not the real aggrieved persons by the above said directions. But that will not give any benefit to the appellant herein.

14.Come to the aspect of negligence in the FIR it has been subsequently stated that the lorry driver bearing Registration No.TN 37 V 5469 driven the vehicle in rash and negligent manner and hit the lorry driven by the complainant in the middle portion, without stopping that lorry proceeded further and hit bridge thereafter a tree and capsized.



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Because of that only, the driver of that vehicle died on the spot. But, during the course of cross examination, it was stated by RW1 that both the vehicles suffered damages in the front side. Ex.R1 is the rough sketch drawn by the police during the course of investigation. The trial Court recorded a finding that on perusal of Ex.R1, it came to know that the occurrence took place in the middle of the road. When the occurrence took place in the middle of the road, there is heavy damage in both the vehicles in the front side, naturally, it is nothing but, head on collision. On that ground only the Tribunal fixed 50% responsibility upon the deceased and 50% upon the third respondent's vehicle's driver. So, I find absolutely, no reason to interfere with the above said finding.

15.Regarding the compensation also I find that it was reasonably fixed. Only Rs.3,750/- was added towards future prospects. Since he was aged about 27 years at the time of the occurrence, half of the amount was deducted towards living and personal expenses. So loss of dependency fixed as Rs.5,35,500/- is proper. But, the Tribunal committed a mistake in calculating the filial consortium. Totally there are 5 claimants. Among the 5 claimants, first claimant namely Moorthy, who is the father of the



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deceased, died. Remaining four persons are alive at the time of the award. Among the four persons, the second petitioner is the mother. 3 to 5 are brothers of the deceased. So only the second petitioner namely the mother Vembu is entitled for filial consortium. Regarding the brothers and sisters, it is settled that they are not entitled for any compensation towards love and affection. So that portion of award is required to be modified. In respect of other two items namely funeral expenses, it was fixed as Rs.10,000/-. But, it must be raised to Rs.15,000/-. Similarly loss of estate is also raised to Rs.15,000/- as per the settled procedure.

16.Accordingly, this appeal is partly allowed and the award amount passed by the Tribunal is modified as follows.

<i>1.Loss of Dependency</i>	<i>- Rs.5,35,500/-</i>
<i>2.Transport Charges to Hospital</i>	<i>- Rs. 7,000/-</i>
<i>3.Filial Consortium</i>	<i>- Rs. 40,000/-</i>
<i>(for one person alone)</i>	
<i>4.Funeral Expenses</i>	<i>- Rs. 15,000/-</i>
<i>5.Loss of Estate</i>	<i>- <u>Rs. 15,000/-</u></i>
<i>Total Compensation</i>	<i>- <u>Rs.6,12,500/-</u></i>



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(i) The quantum of compensation awarded by the Tribunal is reduced to **Rs.6,12,500/- (Rupees Six Lakhs Twelve thousand and five hundred only)** which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant/ insurance company is directed to deposit the entire compensation of Rs.6,12,500 /- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.3800 of 2013 on the file of the Motor Accident Claims Tribunal, Tiruchirappalli (Special District Judge, Tiruchirappalli), within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / insurance company, the first respondent / claimant is permitted to withdraw the entire award amount of **Rs.6,12,500/- (Rupees Six Lakhs Twelve thousand and five hundred only)** after following the due process of law, less any amount already received by her. The share amount fixed by the Tribunal and the Contribution is also confirmed.



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WEB COPY (iv) No costs. Consequently, connected miscellaneous petition stands closed.

21.08.2024

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

1.The Special District Judge, Motor Accident Claims Tribunal,
Tiruchirappalli.

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



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G.ILANGO VAN,J.

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