



C.M.A.(MD)No.13 of 2018

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Dated: 12.08.2024

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

C.M.A.(MD)No.13 of 2018

and

C.M.P(MD) No.158 of 2018

The New India Assurance Company Ltd.,
Rep by through its
Branch Manager
No.96, Bharathiyar Street
Sattur

..Appellant/2nd Respondent

Vs.

1. Lakshmi
2. Minor.Monika
3. Rajavelammal
4. Subbaiah

..Respondents / petitioners

...4th Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award and decree dated 17.07.2017 made in MCOP No.64 of 2015 on the file of the Motor Accident Claims Tribunal(IV Additional District Court, Tirunelveli)

For Appellant : Mr.B.Vijay Karthikeyan

For R1 to R3 : No appearance

For R4 : No appearance



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JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the findings on negligence and the quantum of compensation awarded by the Tribunal.

2. The respondents 1 to 3 filed claim petition stating that on 27.09.2024 at about 03.30 p.m., the deceased was travelling as owner of the goods in a TATA Ace vehicle bearing Reg. No.TN-67-AD-3831 belonging to the fourth respondent herein and insured with the appellant; that the vehicle was driven in a rash and negligent manner, as a result of which, the vehicle capsized and the deceased fell off the vehicle, and sustained fatal injuries.

3. The appellant filed counter stating that the deceased was a gratuitous passenger and as per the policy, only one person could sit besides the driver as loadman in the said vehicle, whereas, as per the claim petition, two persons were seated over the charcoal which was transported in the van; and therefore, the appellant is not liable to pay any compensation.



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4. The claimants examined P.W.1 and P.W.2 and marked Exs.P.1 to P.3. The appellant/insurance company examined R.W.1 and marked one document as Ex.R.1.

5. The Tribunal, after taking into consideration the oral and documentary evidence held that the accident took place due to the rash and negligent driving of driver of the insured vehicle and held that the appellant/Insurance company is liable to pay Rs.15,08,000/- as compensation to the claimants.

6. The learned counsel for the appellant would submit that though the First Information Report and the evidence of P.W.2 suggests that many persons travelled in the van beyond the seating capacity, the Tribunal has fixed the liability on the appellant without giving them opportunity to recover from the owner of the vehicle, as there is violation of policy condition. The learned counsel further submitted that compensation under the head of loss of estate is excessive and therefore, it has to be reduced.

7. Though the learned counsel has entered appearance for the respondents 1 to 3 there is no representation on their side. R4 has been served and none has entered appearance on his behalf.



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WEB COPY 8. This Court has carefully considered the rival submissions.

9. The questions involved in the instant appeal are as to:

i) Whether the Tribunal was right in holding that the appellant is liable to pay compensation?

ii) Whether the compensation awarded by the Tribunal is just and reasonable?

10. As regards the first point, it is seen that the claimants had examined P.W.2 as eyewitness to the occurrence. It is the version of P.W.2 that the deceased was seated next to the driver and one person was seated over the goods in the van. This evidence would suggest that there is violation of policy condition. Further, in Ex.P.1/First Information Report, it is seen that the van was driven by one Mookaiya and the deceased along with another was sitting on the bag containing charcoal which was transported. The contradiction in the First Information Report and the evidence of P.W.2 would show that P.W.2's evidence cannot be completely relied upon. In any case, P.W.2 has himself admitted that there was a passenger sitting beyond the seating capacity. The above evidence and the evidence adduced on the side of the appellant would suggest that there is a



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violation of terms of contract of insurance. Therefore, the appellant can be directed to pay the compensation amount at the first instance and thereafter recover it from the fourth respondent.

11. As regards compensation, this Court finds that the Tribunal had awarded a sum of Rs.2,25,000/- towards loss of consortium and loss of love and affection to the claimants, which is not in accordance with law. Three claimants would be entitled to Rs.40,000/- each, totalling Rs.1,20,000/-. Hence, the quantum of compensation under the said head is reduced to Rs.1,20,000/-.

12. It is also seen that the Tribunal has added 50% towards future prospects which is not in accordance with law. The Tribunal ought to have added 40% towards future prospects. Accordingly, the monthly income of the deceased would come to Rs.9,100/- [Rs.6,500/- + Rs.2,600/- = Rs.9,100/-] and after deducting 1/3rd towards personal expenses, the monthly loss of dependency would come to Rs.6,067/- and thus, the compensation under the head loss of dependency would be Rs.11,64,864/- [Rs.6,067/- X 12 X 16].



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13. The compensation under other heads is confirmed. Thus, the compensation awarded by the Tribunal is reduced to Rs.13,19,864/-.

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1	Loss of dependency	12,48,000/-	11,64,864/-	Reduced
2	Loss of consortium	2,25,000/-	1,20,000/-	Reduced
3	Funeral Expenses	20,000/-	20,000/-	confirmed
4	Transport Expenses	10,000/-	10,000/-	confirmed
5	Loss of Estate	5,000/-	5,000/-	confirmed
	TOTAL	15,08,000/-	13,19,864/-	Reduced

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is reduced from Rs.15,08,000/- to Rs.13,19,864/-. The appellant is directed to deposit the entire award amount, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 and 3 are permitted to withdraw their respective share as apportioned by the Tribunal. The share of the minor second respondent is directed to be deposited in a Nationalised Bank for a period of three years,



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renewable thereafter, till the minor attains majority. The first respondent/mother of the minor second respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimant. The appellant is at liberty to recover the compensation amount in the manner known to law from the fourth respondent. No costs. Consequently connected miscellaneous petition is closed.

12.08.2024

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

1. The Motor Accident Claims Tribunal/
IV Additional District Court, Tirunelveli
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN,J.

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