



C.M.A.(MD).No.761 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.08.2024

DELIVERED ON : 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.761 of 2023
and C.M.P.(MD).No.10707 of 2023

M/s.National Insurance Co. Ltd.,
Through its Branch Manager,
Karur Branch,
Rasi Plaza,
63, West Prakshanam Road,
Karur – 639 002.

... Appellant/2nd Respondent

Vs.

1.Janani

2.Minor Mirunalni

(Respondent No.2 Minor represented by her mother and guardian first respondent.)

3.Lilli

4.Kalidas

... Respondents 1 to 4/Petitioners

5.Balasubramanian

... 5th Respondent/1st Respondent

6.M/s.National Insurance Co. Ltd.,

through its Branch Manager,
Trichy Branch, First Floor, KRT Building,
33, Bharathidasan Salai,
Promenade Road, Cantonment, Trichy – 1.

... 6th Respondent / 3rd Respondent



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PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order dated 13.02.2023 passed in M.C.O.P.No.811 of 2020 on the file of MACT/Special District Judge, Trichy.

For Appellant : Mrs.P.Malini

For Respondents : No Appearance for R1 to R4 & R6
R5 – Exparte

JUDGMENT

This appeal has been filed against the order dated 13.02.2023 passed in M.C.O.P.No.811 of 2020 on the file of MACT/Special District Judge, Trichy.

2.The facts in brief:

On 21.03.2020 at about 05.00 p.m., the deceased was riding the motor cycle bearing Registration No.TN 81 D 8595 from west to east direction on Karur to Trichy Main Road. When he was nearing the place of occurrence a lorry bearing Registration No.TN 47 U 5683 came in the opposite direction in rash and negligent manner and hit the motor cycle. As a result of which, he was thrown out, suffered heavy injuries, taken to Senthil Hospital, Karur, for first aid and later to Kauvery Hospital,



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Trichy. But, died on 01.04.2020, without responding to the treatment.

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3.He was aged about 31 years at the time of occurrence and running Real Estate Business, earning Rs.8,00,000/- per annum. Claiming compensated amount of Rs.2 Crores, the claim application was filed.

4.That was resisted by the Insurance Company by filing counter stating that the accident took place because of the rash and negligent driving on the part of the two wheeler rider. He was also not wearing helmet at the time of occurrence. There was no insurance for the first respondent's vehicle. Apart from that other customary denials were also made.

5.Regarding the first aspect of negligence, the Tribunal recorded a finding that it occurred due to the rash and negligent driving on the part of the first respondent's vehicle driver. But, fixed contributory negligence upon the deceased at 15%, since the occurrence took place in the middle of the road.



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6.Regarding the compensation amount, the age was fixed at 32, on the basis of the entry made in Ex.P6, the driving licence of the deceased. The monthly income was assessed at Rs.78,232/-. 1/4th was deducted towards personal and living expenses. 16 multiplier was adopted and awarded Rs.95,75,520/- towards loss of dependency. To that other customary amounts were added and finally total compensation arrived at Rs.97,45,520/-. Against which this appeal is preferred by the Insurance Company.

7.The learned counsel for the appellant would submit that when the Tribunal has noted that in the middle of the road, the accident took place, it ought to have fixed the contributory negligence as 50%. While calculating the monthly income it has to taken into account the fixed deposit and rental income. These amounts ought to have been deducted from the monthly income. Based upon the income tax returns only, the amount has been fixed by the Tribunal towards monthly income. So according to him, excess amount has been fixed by the Tribunal.



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8. In spite of repeated adjournment, the learned counsel on record for the respondents 1 to 4 did not turn up. Name of the respondents were also printed in the cause list, since none appears. On perusal of records and hearing the counsel for the appellant, the order is passed.

9. Regarding the first aspect of negligence, we will go to the evidence available on record. The eye witness to the occurrence was examined as PW2. He has stated that he witnessed the occurrence by chance. At that time, he found that a two wheeler was driven by its rider by wearing helmet. At that time, the opposite coming vehicle dashed against the two wheeler. As a result of which, this occurrence took place. On the side of the appellant RW1 was examined and produced the rough sketch drawn during the course of investigation in Crime No.156 of 2020. The Tribunal on the basis of the RW1, the rough sketch, has fixed the responsibility on both the vehicles' driver. In Ex.X1, we can find that the place of occurrence is in the middle of the road. As stated in the preamble portion of the order both proceeded in the opposite directions. There was no reason to both of them to come to the middle of the road. But, however, considering the fact that the first respondent was driving



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heavy vehicle he ought to have taken more care than the two wheeler.

That is why it fixed the responsibility as 85/15. But when the accident took place in the middle of the road, automatically, both have contributed negligence equally. So it is reasonably fixed the same as 50/50.

10.Regarding the compensation amount, the Tribunal has taken into account the Income Tax Returns for the period 2019 – 2020, wherein, the total income was mentioned as Rs.7,81,471/-. The date of occurrence is 21.03.2020. As per the profit and loss of account for the year ended on 31.03.2019, the taxable income namely the net profit was mentioned as Rs.6,70,637/-. So that was taken into account by the Tribunal. By calculating so the monthly income was fixed as Rs.55,850/-. Considering the age that he was 32 at the time of occurrence 40% was added towards his future prospects. So the Tribunal arrived at the monthly income as Rs.78,232/-. After deducting 1/4th amount, the loss of dependency was fixed at Rs.58,674/-. 15% was deducted towards the income tax and finally arrived Rs.5,98,474.80 as loss of annual dependency. As mentioned above, he was aged about 32 at the time of occurrence. So multiplier 16 was taken and total loss of dependency was



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fixed as Rs.95,75,520/-, which has no interference. To that the customary amounts are added as follows. For Transportation Rs.10,000/-, which remains unchanged. Loss of consortium for the first petitioner was fixed as Rs.35,000/-, which is enhanced to Rs.40,000/-. Loss of consortium for the 2nd petitioner was fixed as Rs.35,000/-, which is enhanced to Rs.40,000/- and for the petitioners 3 and 4, it was fixed as Rs.70,000/-, which is enhanced to Rs.80,000/-. Funeral expenses is enhanced to Rs.15,000/- and the loss of estate is also enhanced to Rs.15,000/-. So the total compensation is arrived at Rs.97,65,520/-. Since the deceased contributed 50% towards the accident, 50% must be reduced from the above said amount. Hence, the Compensation is fixed as Rs.48,82,760/- as tabulated below.

<i>1.Loss of Dependency</i>	<i>- Rs.95,75,520/-</i>
<i>2.Transportation charges</i>	<i>- Rs. 10,000/-</i>
<i>3.Loss of consortium for 1st petitioner</i>	<i>- Rs. 40,000/-</i>
<i>4.Loss of consortium for 2nd Petitioner</i>	<i>- Rs. 40,000/-</i>
<i>5.Loss of consortium for Petitioners 3 & 4</i>	<i>- Rs. 80,000/-</i>
<i>6.Funeral Expenses</i>	<i>- Rs. 15,000/-</i>
<i>7.Loss of Estate</i>	<i>- <u>Rs. 15,000/-</u></i>
<i>Total Compensation</i>	<i>- <u>Rs.97,65,520/-</u></i>
<i>Less 50% towards Contributory negligence on the part of the deceased</i>	
<i>Rs.97,65,520 – Rs.48,82,760 = Rs.48,82,760.</i>	



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11. Accordingly, this civil miscellaneous appeal is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced to Rs.48,82,760/- (Forty Eight Lakhs Eighty Two Thousand Seven Hundred and sixty 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.48,82,760/- (Forty Eight Lakhs Eighty Two Thousand Seven Hundred and sixty only) (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 before the Tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit the major claimants are permitted to withdraw their share along with interest after following the due process of law, less any amount already received by them. In respect of the minor claimant, the entire share shall be deposited in a Nationalized Bank and the 1st claimant / mother of the minor is permitted to withdraw the interest once in three months.



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(iv) Consequently, connected miscellaneous petition stands closed.

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NCC : Yes / No
Index : Yes / No
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To

1.The Special District Judge, Motor Accidents 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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