



C.M.A(MD)No.708 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.708 of 2019

and

C.M.P(MD)No.8881 of 2019

The National Insurance Company Limited,
Represented through its Branch Manager,
No.24, Kamaraj Bazar,
Bodinaickanur Post,
Bodinaickanur Taluk,
Theni District.

: Appellant/2nd Respondent

Vs.

1.A.Amutha

2.B.Anbu Chezian

: 1 & 2 Respondents/
Petitioners

3.B.Anbu Chezian

:3rd Respondent/
1st Respondent

(R3 is ex-parte in Tribunal : Notice dispensed with)

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and Decree made in M.C.O.P.No.11 of 2018, dated 02.04.2019 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Theni.



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For Appellant : Mr.J.S.Murali
For R1 & R2 : Mr.K.Suresh Kumar
For R3 : Ex-parte

JUDGMENT

[Judgment of the Court was made by
K.K. RAMAKRISHNAN .J.]

The Insurance Company has filed this appeal challenging the award passed in M.C.O.P.No.11 of 2018 by the Motor Accident Claims Tribunal, Additional District Court (FTC), Theni on the ground of negligence and quantum.

2.Facts of the Case:-

The deceased Arun Balachandar, was completed his MBBS degree in PSG Medical College, Coimbatore and practicing as Training Medical Practitioner (CRRI) in the said PSG Medical College. On 01.08.2017 at about 06.15 a.m., when he was travelling in a Chevrolet Beat Car bearing Registration No.TN-60-U-0011 to go to Coimbatore, the driver of the Car, while driving it on Sempatti to Ottanchathram main road and when



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he approached at Theivendran Thottam, Ottanchadram which is between Ramanathapuram and Suraikaipatty from South to North direction, the driver of the car was trying to over take the lorry in a rash and negligent manner which was proceeding in front of a car and suddenly lost his control and hit against the Vagai Tree standing on the northern side of a road and caused serious injuries to the deceased Arun Balachandar and he died on the spot. A Criminal Case was registered against the driver of the car bearing registration No.TN-60-U-0011 belonged to the first respondent by Kannivadi Police in Cr.No.177 of 2017 under Sections 279, 304(A) IPC. Hence, dependants, namely, the parents of the deceased filed claim petition in M.C.O.P.No.11 of 2018 claiming a sum of Rs. 1,50,00,000/- as compensation. In the petition, the claimants stated that the deceased was working as House Surgeon (CRRI) and he was receiving the Stipend of Rs.17,000/- p.m., and he was running a medical shop in his name and he was receiving the income of Rs.25,000/- pm., and he was owning Cardamom Estate and Coconut grove from which, he was earning Rs.15,000/- p.m., and Rs.10,000/- p.m. respectively With these pleading, the claimants filed the claim petition.



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3. The appellant/respondent filed a counter denying all the averments made in the claim petition and contended that the accident did not happen due to the fault of the first respondent's driver. The deceased had travelled in the 1st respondent's car bearing Registration No.TN-60-U-0011 without wearing the seat belt as required by rules at the time of the accident. He also disputed the income of the deceased. The deceased was held responsible for his death and prayed for dismissal of the claim

4. Before the Tribunal, on the side of the claimants P.Ws.1 to 3 were examined and Ex.P1 to Ex.P15 were marked. On the side of the respondent no witness was examined.

5. Findings of the Tribunal:-

The Tribunal after considering the entire evidence adduced on the side of the claimants and also considering the manner of the accident fixed the negligence upon the driver of the car. He also fixed the liability upon the insurance company on the ground that occupants of the car is also to be paid compensation. The Tribunal after considering the evidence on record and also the precedent of the Division Bench of this

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Court, fixed the monthly income of the deceased as Rs.40,000/- and granted a compensation of Rs.59,47,000/-. Challenging the same, the insurance company has filed the present appeal.

6.Submission of the learned counsel for the appellant:

6.1.The learned counsel appearing for the appellant/Insurance Company would submit that admittedly the deceased “did not wear the seat belt” at the time of accident and hence, contributory negligence has to be fixed on the deceased. The deceased is a doctor and he must know the importance of the seat belt and in view of not wearing the seat belt he sustained injury and died and hence, he seeks for applying the theory of contributory negligence.

6.2.The insurance company pleaded that the deceased received a sum of Rs.17,000/- as stipend, as surgeon and there was no evidence that he was earning more than a sum of Rs.17,000/-. In the said circumstances, the Tribunal erred in taking a sum of Rs.40,000/- as monthly income of the deceased.



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6.3.The learned counsel for the appellant further submitted that the conventional damage under the head of love and affection the Tribunal has awarded a sum of Rs.2,00,000/- which is against the judgment of the Hon'ble Apex Court in Pranay Sethi case. Hence, he seeks for interference for the “negligence as well as the quantum”.

7.Submission of the learned counsel for the claimants:

The learned counsel appearing for the claimants would submit that non-wearing of the seat belt is not a matter to decide the issue of negligence. The Tribunal after considering the manner of the accident fixed the negligence upon the driver of the said vehicle. Hence, there no interference is required in the findings of the tribunal.

(ii) He further submitted that even though there was a pleading to the effect that the deceased was receiving a sum of Rs.17,000/- as Stipend, during the course of trial, the claimants produced the documents to show that the deceased was working as House Surgeon at the time of accident. Further, the Tribunal after considering the over all circumstances and also the precedent of this Court correctly fixed a sum



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of Rs.40,000/- as monthly salary in the case of doctor. Hence, there is no interference is required in the monthly income of the deceased. Further, the learned counsel admitted that the deceased was doctor and he is only son to his parents and hence, he seeks for dismissal of the appeal.

8.1.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the claimants and the impugned judgment passed by the Tribunal. The following points for determination arise for consideration of this appeal;

8.2. whether the contention of the learned counsel for the appellant insurance company to attribute contributory negligence against the deceased on account of his non-wearing of the seat belt is acceptable or not?

8.3. whether the amount awarded by the tribunal is in accordance with law?

9.Regarding the negligence aspect on the ground of non-wearing of the seat belt, the learned Tribunal considered the manner of the accident and Ex.P1 and the evidence of P.W.2 and gave a categorical finding that



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non-wearing of the seat belt is not a matter to attribute contributory negligence on the part of the deceased. Further, from the evidence of P.W.2 it is clear that due to sudden loss of the control, the vehicle hit against the tree. Hence, non-wearing of the seat belt is not cause for the accident and no material evidence was produced that non-wearing of the seat belt is a reason to attract contributory negligence. The Hon'ble Supreme Court and the various Courts have repeatedly held that every breach of the pre-cautionary rules mentioned in the Motor Vehicle Act and Rules is not a ground to disown the liability by the insurance company unless there is positive evidence to prove the said breach is a material one for the accident. The Hon'ble Supreme Court in the case of ***Mohd. Siddique v. National Insurance Co. Ltd., (2020) 3 SCC 57*** at **page 61** has held as follows

12.....There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if



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there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimised, that the principle of contributory negligence could be invoked.

10. In view of the above principles, in the absence of any evidence to prove that non-wearing of the seat belt has caused for accident, this Court is not inclined to accept the contention of the learned counsel for the insurance company to attribute contributory negligence against deceased for his act of non-wearing of the seat belt. Hence, this Court concurs with the findings of the Tribunal on the point of the negligence.

11. Insofar as the quantum of compensation is concerned, the insurance company disputed the monthly salary of Rs.40,000/- fixed by the Tribunal. According to the learned counsel for the insurance company



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that the deceased received a stipend of Rs.17,000/-. The learned Tribunal fixed a sum of Rs.40,000/- without any additional documents.

12.This Court perused the records and also number of documents adduced, the Tribunal disbelieved P.W.3 and Ex.P15 and took the judicial notice of the notional income of the each doctor, and fixed a sum of Rs. 40,000/-. When the Tribunal taken into the judicial notice and considered the facts and circumstances of the case and also other materials on record, this Court is not inclined to interfere with the said findings and this Court does not find any perversity and hence, Rs.40,000/- fixed as monthly salary of the deceased is in accordance with law.

13. Insofar as the loss of love and affection is concerned, the Tribunal has granted a sum of Rs.2,00,000/- which is against the judgment of the Hon'ble Apex Court in the case of Pranay Sethi and hence, this Court is inclined to reduce the amount awarded for the love and affection from Rs.2,00,000/- to Rs.80,000/-.



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14. In the result, the appeal is partly allowed and the award amount is reduced from **Rs.59,47,000/- to Rs.58,27,000/-**. The appellant Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, and can deduct the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are permitted to withdraw their share as per the order of apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
25.03.2024

Index:Yes/No
Internet:Yes/No
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To

- 1.The Motor Accident Claims Tribunal,
Additional District Court (FTC),
Theni.
- 2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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**V.BHAVANI SUBBAROYAN.J.,
and
K.K. RAMAKRISHNAN.J.,**

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