



C.M.A.(MD) No.476 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.476 of 2016

and

C.M.P.(MD)No.6103 of 2016

The Branch Manager,
Royal Sundaram Alliance General Insurance Company Ltd.,
ADP Towers, 5th Floor,
Madurai – 10.

... Appellant

Vs.

1.Sembayee,
2.Azhagu Raj,
3.Suresh,
4.Vinoth Kumar,
5.Kathir,
6.Chinnaiyya,
7.Selvam.

... Respondents

Prayer: Civil Miscellaneous Appeal filed Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.01.2016 passed in M.C.O.P.No.690 of 2013, on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Pudukottai.



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C.M.A.(MD) No.476 of 2016

For Appellant : Mr.M.Jerin Mathew

For Respondents
for R1 to R6 : No appearance

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the finding on negligence and the quantum of compensation awarded by the Tribunal to the respondents 1 to 6 herein.

2. The respondents 1 to 6 filed a claim petition before the Tribunal stating that while the deceased was travelling in his TVS XL Super, a lorry, insured with the appellant, proceeded in the same direction but stopped suddenly, as a result of which the deceased dashed the lorry from behind and sustained fatal injuries.

3. The owner of the lorry remained *ex parte* before the Tribunal.

4. The appellant filed a counter stating that the accident took place only due to the negligence of the deceased as he was in inebriated



C.M.A.(MD) No.476 of 2016

condition and he did not keep sufficient distance while following the insured lorry; and that the deceased did not possess a valid licence and therefore, the appellant is not liable to pay any compensation.

5. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P15. The appellant neither examined any witnesses nor marked any documents.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the negligence of the driver of the lorry insured with the appellant, however, fixed 10% contributory negligence on the deceased for driving the vehicle without a valid licence and directed the appellant to pay compensation at Rs.18,87,600/-.

7. The learned counsel for the appellant submitted that since the deceased was in inebriated condition, he did not keep a safe distance from the lorry, which was proceeding in front of him; that the Tribunal ought to have fixed higher contributory negligence on the deceased; and that in any case, the compensation awarded by the Tribunal under all heads is



C.M.A.(MD) No.476 of 2016

excessive and prayed for reduction.

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8. Though notice sent to the respondents 1 to 6 has been served, none has entered appearance. Notice has not been served on the seventh respondent. In view of the order that this Court proposes to pass, notice to the seventh respondent may not be necessary.

9. The points for consideration in the instant appeal are as follows:

'a. Whether the finding of the Tribunal on negligence is justified?

b. Whether the quantum of 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-eye witness to the occurrence and filed FIR-Ex.P1 and the Report of the Motor Vehicle Inspector-Ex.P14, which corroborate the version of P.W.2. The evidence of P.W.2 and other documents would suggest that the accident took place only due to the negligent driving of the lorry insured with the appellant. The appellant has not let in any contrary evidence. However, it is seen that the Tribunal found that the deceased did not have a valid licence and for the said statutory violation, the Tribunal had fixed 10% contributory negligence on the deceased. This



C.M.A.(MD) No.476 of 2016

Court finds no infirmity in the said finding of the Tribunal. The Point

No.1 is answered accordingly.

11. As regards the quantum of Compensation, this Court finds that since the deceased was aged 52 years at the time of accident in the year 2013, the Tribunal had fixed the notional income of the deceased at Rs.7,000/- p.m. The deceased was employed abroad and had come to India on a holiday. Since the respondents 1-6/claimants have not produced any proof of income, the Tribunal had adopted the notional income at Rs.7,000/- p.m. This Court is of the view that the notional income fixed by the Tribunal at Rs.7,000/- cannot be faulted. However, the Tribunal had determined the age of the deceased as 52 years, which is contrary to the evidence on record. The Tribunal had added 30% towards future prospects and deducted 1/10th of the income towards personal expenses, which is erroneous. The claimants had marked the passport of the deceased, which shows that the date of birth of the deceased is 21.10.1965. Therefore, he was aged 48 years at the time of accident. Hence, 25% has to be added towards future prospects. The multiplier applicable is '13'. the deceased had 6 dependents and hence 1/5 has to be deducted towards his personal expenses. Thus, the compensation under



C.M.A.(MD) No.476 of 2016

the head 'loss of income' has to be Rs.7,000/- + Rs.1,750/- (25%) x 12 x 13 x 4/5 = Rs.10,92,000/-. Thus, the compensation under the head 'loss of income' is reduced from Rs.12,77,640/- to Rs.10,92,000/-.

12. The claimants are entitled to Rs.40,000/- each under the head 'loss of consortium'. However, the Tribunal had awarded Rs.6,00,000/- (Rs.1,00,000/- each) towards loss of love and affection and Rs.50,000/- towards 'loss of consortium' for the wife, which is excessive. Therefore, the said amount is reduced to Rs.40,000/- each. The compensation under the head 'loss of estate' at Rs.1,00,000/- is also excessive, which is unwarranted and hence, set aside. The compensation awarded by the Tribunal under the other heads are reasonable and hence confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of income	Rs. 12,77,640/-	Rs. 10,92,000/-	Reduced
2	Loss of consortium and loss of love and affection	Rs. 6,50,000/- (Rs.50,000/- + Rs.6,00,000/-)	Rs. 2,40,000/-	Reduced
3	Loss of estate	Rs. 1,00,000/-	---	Cancelled
4	Funeral expenses	Rs. 25,000/-	Rs. 25,000/-	Confirmed
5	Transportation charges	Rs. 2,000/-	Rs. 2,000/-	Confirmed



C.M.A.(MD) No.476 of 2016

6	Medical expenses	Rs. 42,693/-	Rs. 42,693/-	Confirmed
Total		Rs. 20,97,333/-	Rs.14,01,693/-	Reduced by Rs.6,95,640/-
10% towards contributory negligence			(-)Rs.1,40,169/-	
Total			Rs.12,61,524/-	

13. The appellant/Insurance Company is liable to pay **Rs.12,61,524/-** (Rupees Twelve Lakhs Sixty One Thousand Five Hundred and Twenty Four only), together with interest at 7.5% p.a. from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and proportionate costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

14. On such deposit, the respondents 1 to 6/claimants are permitted to withdraw their share amount with interest and costs, as per the apportionment fixed by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.



C.M.A.(MD) No.476 of 2016

15.In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, connected miscellaneous petition is closed.

14.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. The Motor Accidents Claims Tribunal/Principal District Judge,
Pudukottai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD) No.476 of 2016

SUNDER MOHAN, J.

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C.M.A.(MD) No.476 of 2016

14.10.2024