



C.M.A.(MD).No.459 of 2018 and Cross Obj. (MD)No.44 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.12.2023

Delivered On : 30.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.459 of 2018
and
Cross Obj.(MD)No.44 of 2023
and
C.M.P.(MD)No.5494 of 2018

C.M.A.(MD)No.459 of 2018:-

United Insurance Company Limited,
Through its Branch Manager,
48-A-9, Leela Balan Complex 1st Floor,
Tirunelveli Main Road,
Kanyakumari & District.

... Appellant

Vs.

1.Freeda
2.Sesuraj
3.Haridhas

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 18.07.2017 made in M.C.O.P.No.1370 of 2015 on the file of the Motor



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Accident Claims Tribunal (Special Sub Court), Tirunelveli.

For Appellant : Mr.B.Rajesh Saravanan
For R1 & R2 : Mr.V.Sasikumar
For R3 : Given Up

Cross Obj.(MD)No.44 of 2023:-

1.Freeda
2.Sesuraj ... Cross Objectors

Vs.

1.United Insurance Company Limited,
Through its Branch Manager,
48-A-9, Leela Balan Complex 1st Floor,
Tirunelveli Main Road,
Kanyakumari & District.

2.Haridas ... Respondents
(2nd respondent is given up
as he has not appeared
at the time of trial)

PRAYER : Cross Objection filed under Order XLI Rule 22(1) of the Civil Procedure Code, to allow the Cross Objection filed in C.M.A. (MD)No.459 of 2018 against M.C.O.P.No.1370 of 2015 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli dated 18.07.2017.

For Cross Objectors : Mr.V.Sasikumar
For R1 : Mr.B.Rajesh Saravanan
For R2 : Given Up



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the appellant/second respondent/insurance company, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal cum Special Sub Judge, at Tirunelveli in M.C.O.P.No. 1370 of 2015 dated 18.07.2017.

2.This Cross Objection has been filed by the Cross appellants/petitioners/claimants, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal cum Special Sub Judge, at Tirunelveli in M.C.O.P.No.1370 of 2015 dated 18.07.2017.

3.For the sake of convenience, the parties are arrayed herein as per the rank in M.C.O.P.No.1370 of 2015.

4.The factual matrix of the present case, briefly stated, are as under:-

This is a fatal case case. The petitioners are the parents of the



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deceased. On 29.07.2015, at about 10:30 a.m., the deceased Christo Tharun was riding a motorcycle bearing registration No.TN-72-AY-7221 from north to South on Anjugramam - Kanyakumari Main Road near Paulkulam on the left side of the road. At that time, a bullet bearing registration No.TN-72-V-1993 belonging to the first respondent insured with the second respondent came from the opposite direction by overtaking a vehicle going ahead and came to the wrong side and hit against the motorcycle of the deceased. As the result of the hit, the deceased was thrown out of the motorcycle and fell down on the road, sustaining grievous injuries. He was immediately taken to Dr.Jayasekharan Hospital at Nagercoil and thereafter, for further treatment taken to Asaripallam Medical College and was admitted as in patient. Even after best and effective treatment, he died in the hospital on 01.08.2015. A criminal case was registered by Anjugramam Police Station in Crime No.392 of 2015 against the first respondent rider. As per the petitioners, the deceased was a fisherman by profession and was earning an amount of Rs.15,000/- per month. Seeking a compensation of Rs.20,00,000/-, the petitioners have filed the claim petition.



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5.The first respondent is the owner of the vehicle involved in the accident and the second respondent is the insurance company, with which the first respondent's vehicle was insured. The second respondent has filed a counter refuting each and every allegations set forth in the claim petition.

6.The learned Tribunal framed three issues. Two witnesses were examined as P.W.1 and P.W.2 on the side of the petitioners and Ex.P1 to Ex.P4 were marked. Two witnesses were examined as R.W.1 and R.W.2 and two documents Ex.R1 and Ex.R2 were marked on the side of the respondents. The first respondent was called absent and set exparte. On the basis of the oral and documentary evidence and the arguments put forth by the respective parties, the Tribunal proceeded to conclude that the accident happened only due to the rash and negligent driving of the rider of the first respondent's bullet.

7.The mother of the deceased is the first petitioner and she has deposed her evidence as P.W.1 and on the basis of her evidence, the learned Tribunal proceeded to decide that the petitioners are the legal



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heirs/parents of the deceased Christo Tarun and on that basis, they are entitled for compensation. That apart, the Administrative Officer of the second respondent insurance company was examined as R.W.2 and he deposed his evidence stating that the deceased did not possess any valid license at the time of accident. However, the learned Tribunal held that since the accident happened only due to the rash and negligent driving of the rider of the first respondent bullet and since the said vehicle has been insured with the second respondent and that the currency of insurance policy was valid at that point of time, the second respondent is entitled to indemnify the first respondent.

8.On the basis of the postmortem report marked as Ex.P2 and the First Information Report marked as Ex.P1, the learned Tribunal concluded that the age of the deceased was 17 years. Since the deceased was a bachelor, following the dictum laid down by the Hon'ble Apex Court in the case of *Sarala Verma and others v. Delhi Transport Corporation and other* reported in *2009 (2) TNMAC 1*, the learned tribunal decided to deduct half of the income of the deceased towards his personal expenses. The Tribunal fixed a notional income of the deceased



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as Rs.6,000/- per month and added 50% of the said amount towards future prospects of the deceased and calculated Rs.9,000/- as his monthly income. On the basis of *Sarala Verma* case, the learned Tribunal adopted the relevant multiplier '18'. The learned Tribunal has calculated the loss of dependency as Rs.9,72,000/- (Rs.9,000x12x18). The learned Tribunal has awarded the compensation under the following heads:-

Head	Compensation awarded
(I) Loss of Dependency:	Rs.9,72,000/-
(ii) Loss of filial consortium for petitioners:	Rs.2,00,000/-(Rs.1,00,000/- each)
(iii) Transportation Expenses:	Rs.10,000/-
(iv) Funeral Expenses:	Rs.25,000/-
(v) Pain and mental Agony:	Rs.13,000/-
Total compensation awarded:	Rs.12,20,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

9. Challenging the same, the appellant/second respondent/insurance company had filed this Civil Miscellaneous Appeal and the cross appellants/petitioners/claimants had filed the Cross Objection.



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10.The learned counsel for the appellant/second respondent submitted that the learned Tribunal failed to consider that the deceased was 17 years at the time of accident and without holding a valid driving license, he drove the two wheeler and caused of the accident.

11.The learned counsel for the appellant/second respondent vehemently contended that the notional income fixed by the learned Tribunal was unreasonable, and the learned Tribunal ought not to have added 50% of the notional income as future prospects. That apart an exorbitant interest of 9% has been awarded. It was also submitted that 50% of the award amount has already been deposited before the learned Tribunal.

10.A careful perusal of the materials available on record would make it clear that, undoubtedly the deceased was a minor boy at the time of accident and obviously, he did not possess a valid driving license. Hence I am of the considered view that the learned Tribunal ought to have fixed at least 10% contributory negligence on the deceased for the accident which happened on the fateful day. That apart the rate of interest



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has to be reduced from 9% to 7.5%. As far as filial consortium is concerned, following the dictum laid down by the judgment passed by the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. v Nanu Ram and others*** reported in ***2018 ACJ 2782 (SC)***, the learned Tribunal ought to have awarded Rs.40,000/- per head and hence, a total amount of Rs.80,000 towards filial consortium for the petitioners is awarded.

12.Likewise towards future prospects, the learned Tribunal ought to have added only 40% of the notional income following the judgement of the case of ***National Insurance Company Limited Vs. Praney Sethi and others*** reported in ***(2017) 16 Supreme Court Cases 680***, towards future prospects. The notional income fixed by the Tribunal as Rs.6,000/- is reasonable. After adding 40% of the income income towards future prospects, the income of the deceased would be Rs.8,400/- [Rs. 6,000+2,400 (Rs.6000x40/100)]. As per Sarala Verma case, 1/2th of the income has to be deducted towards personal income. Hence, the contribution towards family would be Rs.4,200/-[Rs.8,400-4,200]. After adopting multiplier '18' as per Sarala Verma case, the loss of dependency is



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calculated as Rs.9,07,200/- (4,200x12x18).

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Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Reduced/ Confirmed
(I) Loss of Dependency:	Rs.9,72,000/-	Rs.9,07,200/-	Reduced
(ii) Loss of filial consortium for petitioners:	Rs.2,00,000/- (Rs.1,00,000/- each)	Rs.80,000/-(Rs.40,000/- each)	Reduced
(iii) Transportation Expenses:	Rs.10,000/-	Rs.10,000/-	Confirmed
(iv) Funeral Expenses:	Rs.25,000/-	Rs.25,000/-	Confirmed
(v) Pain and mental Agony:	Rs.13,000/-	Rs.13,000/-	Confirmed
Total compensation awarded:	Rs.12,20,000/-	Rs.10,35,200/-	Reduced

13. Since 10% contributory negligence is fixed on the deceased, 10% of the total award amount, that is, Rs.1,03,520/- has to be deducted towards the contributory negligence of the deceased and the final award amount after deducting 10% contributory negligence, which the petitioners are entitled to a sum of Rs.9,31,680/- [Rs.10,35,200-1,03,520/-] as compensation.



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14.The insurance company directed to deposit Rs.9,31,680/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw the award amount with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. The insurance company is entitled to withdraw the excess amount, if any. The claimants are not entitled for interest for the default period, if there is any.

15.Accordingly, the Civil Miscellaneous Appeal stands partly allowed and the Cross Objection stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

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L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Motor Accidents Claims Tribunal Cum
Special Sub Judge, Tirunelveli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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