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C.M.A.(MD)No.657 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.657 of 2023

and

C.M.P(MD)No.8553 of 2023

ICICI Lombard General Insurance Company Limited,
ICICI Lombard House,
414, Veer Savarkar Marg,
Near Siddhi Vinayak Temple,
Prabhadevi,
Mumbai – 400 025.

...Appellant/2nd Respondent

Vs.

1.Valli
2.Murugesan
3.Vasanthi
4.Ramesh

... Respondent Nos.1 to 4/
Petitioner Nos.1 to 4

5.Athul

... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to call for the records pertaining to the fair and decreetal order passed by the Motor Accident Claims Tribunal, Additional District Judge (FTC), Tenkasi in M.C.O.P.No.24 of 2019, dated 22.11.2021, set aside the same by allowing the appeal.

For Appellant :Mr.P.Pethu Rajesh

For R1 to R4 :Mr.R.J.Karthick



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JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Award dated 22.11.2021 passed in M.C.O.P.No.24 of 2019 by the Motor Accident Claims Tribunal/Additional District Judge (FTC), Tenkasi.

2) The second respondent in M.C.O.P.No.24 of 2019 is the appellant herein.

3) The respondents 1 to 4/claimants dependants of the deceased Natarajan filed the claim petition in M.C.O.P.No.24 of 2019.

4) For the sake of convenience, the parties arrayed in M.C.O.P.No. 24 of 2019 is adopted hereunder.

5) The brief facts of the case:

On 22.10.2014 at 5.30 hours the deceased Natarajan was travelling as pillion rider in TVS XL Motorcycle bearing registration number TN 76 M 1561 along the Chockampatti to Kadayanallur NH Road from north to south. At that time, the first respondent had ridden his two wheeler bearing registration number TN 10 AH 7797 in a rash and negligent manner from same direction and hit back side of the



motorcycle. Due to impact, the said Natarajan sustained multiple fatal injuries and died. So his dependants wife and children filed the claim petition seeking compensation of Rs.25,00,000/-.

6. The second respondent/Insurance Company objected the claim petition by contending that the accident took place due to negligence of the rider of the motorcycle in which the deceased was travelling as pillion rider. The motorcyclist had no driving licence and the motorcycle was not insured with any insurance company. Therefore, the petitioners are not entitled to the compensation from the second respondent.

7. Before the Tribunal both side adduced oral and documentary evidence. After hearing both and after considering the evidences, the Tribunal Court has held negligence on the first respondent and so, the second respondent/Insurance Company is liable to pay compensation and awarded compensation of Rs.19,90,000/- to the petitioners. Aggrieved by the said award, the second respondent has preferred this Civil Miscellaneous Appeal.

8. Heard both side upon the admission stage of the appeal.



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9. At the time of argument on admission stage, both side have admitted that the accident took place due to rash and negligent driving of the first respondent and the second respondent/Insurance Company is liable to pay compensation. They have also admitted the income and age of the deceased and multiplier. The only dispute is addition of future prospectus of 25%. The petitioners would submit that the income of the deceased was held at Rs.10,000/- and 25% of the same has to be added towards future prospectus. After adding future prospectus, the deduction towards personal expenses has to be taken into consideration. The appellant/Insurance Company has not disputed the same.

10. Based on arguments, this Court arrived at the income of the deceased Natarajan as follows. The Tribunal fixed the income of the deceased as Rs.10,000/-. 25% of the said amount i.e., Rs.2,500/- is added towards future prospectus and totally Rs.12,500/- is fixed as monthly income. From Rs.12,500/- $\frac{1}{4}$ th amount is deducted towards his personal expenses i.e., Rs.3,125/- is deducted from Rs.12,500/-. Thus, the monthly income is fixed at Rs.9,375/- as income of the deceased Natarajan. There is no dispute regarding age of the deceased as 49 and multiplier 13. Hence, the compensation under the head loss of income is Rs.14,62,500/-.



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11. On perusal of award of the Tribunal, the Tribunal awarded Rs.15,000/- each towards loss of estate and loss of funeral expenses and the same confirmed. The Tribunal has awarded compensation of Rs.1,00,000/- towards loss of love and affection to each petitioner in total Rs.4,00,000/-. As per dictum laid down by the Hon'ble Supreme Court in **Pranay Sethi case (2017 (2) TNMAC 609 (SC)**, each dependent of the deceased would be awarded Rs.40,000/- towards loss and love affection. Therefore, the petitioners 1 to 4 are also entitled to Rs.40,000/- each towards loss of love and affection.

12. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants in M.C.O.P.No.24 of 2019 as follows:

Sl. No.	Description	Amount awarded by this Court
1.	Loss of income (Rs.9,375/- x 12 x 13)	Rs.14,62,500/-
2.	Towards funeral expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Loss of consortium and love and affection to the petitioners 1 to 4, being wife and children of the deceased (Rs.40,000/- x 4)	Rs. 1,60,000/-
	Total	Rs. 16,52,500/-



Therefore, the petitioners 1 to 4/claimants in M.C.O.P.NO.25 of 2019 are entitled to Rs.16,52,500/-. To that extent, the compensation awarded by the Tribunal is to be modified.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.19,90,000/- to Rs.16,52,500/- (Rupees Sixteen Lakhs Fifty Two Thousand Five Hundred only).

(iii) The first claimant/wife of the deceased, who is the first respondent herein is entitled to receive a sum of Rs.6,32,500/-, the claimants 2 to 4 children of the deceased, who are respondents 2 to 4 herein are entitled to receive a sum of Rs.3,40,000/- each with proportionate interests and costs.

(iv) The appellant/2nd respondent Insurance Company is directed to deposit the entire compensation amount of Rs.16,52,500/- (Rupees Sixteen Lakhs Fifty Two Thousand Five Hundred only), less the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.24 of 2019 on the file of the Motor Accident Claims Tribunal/Additional District Court (FTC), Tenkasi within a period of six



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weeks from the date of receipt of a copy of this order. The excess amount, if any, already deposited by the appellant/Insurance Company shall be refunded to the appellant;

(v) On such deposit being made by the appellant/2nd respondent Insurance Company, the claimants/respondents 1 to 4 herein are permitted to withdraw their entire share amount as apportioned by this Court with proportionate interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. Consequently, connected miscellaneous petition is closed.

14.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Motor Accident Claims Tribunal/
Additional District Judge (FTC),
Tenkasi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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14.02.2024