



C.M.A.(MD) No.651 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.651 of 2018

and

C.M.P.(MD) No.7525 of 2018

The Branch Manager,
M/s.Reliance General Insurance Company Limited,
Annasalai, Teynampet,
Chennai - 600 018.

... Appellant

Vs.

1.Minor Ragavi
D/o.Ravichandran
rep. by her mother/R3

2.Rani
D/o.Ravichandran

3.Thamayanthi
W/o.Ravichandran

4.Rajagobal
S/o.Natesan

5.Poongkodi
W/o.Rajagobal

6.Govindasamy
S/o.Ramasamy

... Respondents



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Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Judgment and Decree passed by the Special District Court (Motor Accident Claims Tribunal), Thanjavur in M.C.O.P.No.1050 of 2014, dated 29.03.2016.

For Appellant : Mr.V.Sakthivel

For R1 to R5 : Mr.N.Sudhagar Nagaraj

For R6 : No appearance

J U D G M E N T

The instant Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Award dated 29.03.2016 passed by the Special District Court (Motor Accident Claims Tribunal), Thanjavur in M.C.O.P.No.1050 of 2014, on the ground that the quantum of compensation awarded by the Tribunal is excessive.

2. Since the sixth respondent had remained *exparte* before the Tribunal, notice to the sixth respondent is dispensed with.

3. The first to fifth respondents/claimants filed a claim petition in M.C.O.P.No.1050 of 2014 before the Tribunal stating that on 05.05.2014 at about 08.15 a.m., while the deceased Ravichandran and his wife who is



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the third respondent herein were proceeding in a two wheeler bearing Registration No.TN-49-K-9760, the driver of a Car bearing Registration No.TN-10-AD-4510 owned by the sixth respondent drove the vehicle in a rash and negligent manner and collided with the two wheeler, as a result of which, the deceased sustained multiple injuries and succumbed to the injuries later. The third respondent who is the wife of the deceased had filed M.C.O.P.No.1088 of 2014 for the injuries sustained by her in the said accident.

4. The sixth respondent owner of the vehicle had remained *exparte* before the Tribunal. The appellant Insurance Company had filed counter affidavit stating that the accident took place only due to the negligence of the deceased and therefore, neither the appellant nor the sixth respondent is liable to pay the compensation.

5. Before the Tribunal, in both M.C.O.Ps., the first to fifth respondents/claimants had examined the third respondent who is the wife of the deceased as P.W.1 and the Doctor as P.W.2 and marked 15 documents as Exs.P1 to P15. On the side of the appellant Insurance Company, two documents were marked as Exs.R1 and R2.



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6. The Tribunal, after taking into consideration of the oral and documentary evidence, awarded a sum of Rs.19,64,689/- as compensation to the first to fifth respondents/claimants for the death of the said Ravichandran.

7. The learned counsel for the appellant submitted that the deceased was also guilty of negligence and therefore, the Tribunal ought to have fixed the contributory negligence on the part of the deceased; that the quantum of compensation awarded by the Tribunal is excessive inasmuch as the Tribunal has awarded a sum of Rs.3,10,000/- towards loss of consortium and love and affection to the five claimants which is contrary to the settled principles of law; and that the driver of the car insured with the appellant did not have a valid licence.

8. The learned counsel for the first to fifth respondents/claimants submitted that the Tribunal, after taking into consideration of evidences let in by both sides including the deposition of P.W.1 who was the pillion rider of the two wheeler, found that the accident took place only due to the rash and negligent driving of the driver of the car insured with the



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appellant Insurance Company; and that the compensation awarded by the

Tribunal is just and reasonable and hence no interference is called for.

9. The questions that arise for consideration in the instant appeal are

- (a) whether the Tribunal is right in holding that the driver of the sixth respondent's car drove the vehicle in a rash and negligent manner and that the appellant Insurance Company is liable to pay the compensation? and
- (b) whether the Tribunal has awarded just and reasonable compensation to the first to fifth respondents/claimants?

10. As regards the question on negligence, it is seen that the first to fifth respondents/claimants had examined P.W.1 who was also injured in the accident. Her evidence is clear, cogent and establishes that the accident took place only due to the negligence of the driver of the car insured with the appellant. The appellant Insurance Company has not let any contra evidence to disprove the evidence let in on the side of the first to fifth respondents/claimants. Therefore, the Tribunal is right in holding that the driver of the offending vehicle insured with the appellant Insurance Company was negligent while driving the car.



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11. As regards the question of quantum of compensation, it is seen that the Tribunal had taken the monthly income of the deceased as Rs.13,740/- on the basis of Ex.P8 Pay Certificate filed on the side of the first to fifth respondents/claimants. The Pay Certificate has not been seriously disputed by the appellant. The deceased was working as a Village Assistant. The deceased was aged 49 years at the time of accident and hence, the multiplier applicable is 13. Since there are five dependents, 1/4th of the income had to be deducted towards personal expenses. Thus, the award of compensation of Rs.16,07,580/- under the head of loss of income is just and reasonable. The award of compensation under the other heads such as funeral expenses, loss of estate, transport charges are also just and reasonable.

12. However, it is seen that the Tribunal had awarded a total amount of Rs.3,10,000/- to the first to fifth respondents/claimants towards loss of love and affection and loss of consortium. This is excessive and contrary to the guidelines issued by the Hon'ble Supreme Court. The first to fifth respondents/claimants are entitled to Rs.40,000/- each under the head of loss of consortium. Hence, the quantum of compensation awarded



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under the heads 'loss of love and affection' and 'loss of consortium' in the impugned Award is modified to Rs.2,00,000/-. Thus, the total compensation payable to the first to fifth respondents/claimants is as under:-

Sl. No	Amount awarded by the Tribunal		Amount awarded by this Court		Award confirmed or enhanced or reduced
	Head	Amount	Head	Amount	
1	Loss of income	Rs.16,07,580	Loss of income	Rs.16,07,580	Confirmed
2	Funeral Expenses	Rs.25,000/-	Funeral Expenses	Rs.25,000/-	Confirmed
3	For loss of estate	Rs.10,000/-	For loss of estate	Rs.10,000/-	Confirmed
4	Transport Charges	Rs.10,000/-	Transport Charges	Rs.10,000/-	Confirmed
5	For loss of love & affection to R1	Rs.1,00,000/-	Loss of consortium to R1	Rs.40,000/-	Reduced
6	For loss of love & affection to R2	Rs.10,000/-	Loss of consortium to R2	Rs.40,000/-	Enhanced
7	For loss of consortium to R3	Rs.1,00,000/-	Loss of consortium to R3	Rs.40,000/-	Reduced
8	For loss of love & affection to R4	Rs.50,000/-	Loss of consortium to R4	Rs.40,000/-	Reduced
9	For loss of love & affection to R5	Rs.50,000/-	Loss of consortium to R5	Rs.40,000/-	Reduced



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Sl. No	Amount awarded by the Tribunal		Amount awarded by this Court		Award confirmed or enhanced or reduced
	Head	Amount	Head	Amount	
10	Medical Expenses	Rs.2,109/-	Medical Expenses	Rs.2,109/-	Confirmed
Total		Rs.19,64,689/-	Total	Rs.18,54,689/-	Reduced by Rs.1,10,000/-

13. It is seen that the Tribunal found that the owner of the car insured with the appellant did not have any valid licence and hence granted liberty to the appellant Insurance Company to pay the compensation and recover the same from the sixth respondent. This finding is also confirmed, as the evidence suggests that the driver did not have a valid license.

14. The Tribunal has awarded interest at 9% per annum which is excessive in the facts and circumstance of the case. This Court is of the view that the first to fifth respondents/claimants would be entitled to the interest at 7.5% per annum.

15. The appellant Insurance Company is directed to deposit the aforesaid modified amount together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and costs,



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less the amount already deposited, if any, within a period of 4 weeks from the date of receipt of a receipt of a copy of this order.

16. If the appellant Insurance Company has already deposited the compensation in excess, the appellant Insurance Company is permitted to withdraw the excess amount together with interest accrued thereon by filing appropriate application before the Tribunal.

17. The second to fifth respondents are permitted to withdraw the amount and interest and cost, in the same proportion awarded by the Tribunal, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

18. As far as the first respondent is concerned, she was a minor at the time of filing of claim petition in the year 2014. It is seen from the records that the first respondent would have now attained majority. Therefore, the first respondent is directed to file appropriate application before the Tribunal for recording her as a major for the purpose of withdrawing her share along with interest and costs.



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

No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/ No

Neutral Citation: Yes / No

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The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.



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SUNDER MOHAN, J.

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