



C.M.A.(MD).No.1147 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 29.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1147 of 2017

The Branch Manager,
Iffco-Tokio General Insurance Co Ltd.,
First Floor, Chandragandhi Nagar,
Ponmeni, Madurai,
Madurai District.

... Appellant

Vs.

1.R.Sankaranarayanan (Died)
(Memo dated 14.11.2022 in USR No.32280
is recorded to the effect that R1 died and since
other dependants viz R2 and R3 are already on record
there is no need to implead his legal heirs as per the
order of this Court dated 04.08.2023 made in
C.M.A.(MD)No.1147 of 2017 by KMSJ)

2.R.Lakshmanan
3.R.Visalakshmi
4.P.Ramesh

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, to set aside the judgment and decree passed by



C.M.A.(MD).No.1147 of 2017

the Additional Motor Accidents Claims Tribunal/Subordinate Judge of Aruppukottai in M.C.O.P.No.44 of 2014 dated 11.11.2016.

For Appellant	: Mr.S.V.Sakthivel
For R2 & R3	: Mr.G.Mariappan
For R1	: Died
For R4	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed as against the judgment and decree on certain counts passed by the Motor Accident Claims Tribunal, Sub Judge, Aruppukottai, in M.C.O.P.No.44 of 2014 dated 11.11.2016 by the appellant/2nd respondent/insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.44 of 2014.

3.The brief facts leading to the filing of the Claim Petition is as follows:-

This is a fatal case. The petitioners 1 and 2 are the brothers of the deceased and the third petitioner is the sister of the deceased. The deceased Ramamoorthy was a Poojari. On 23.04.2012, at about 07.15 a.m., along the Madurai - Thirumangalam road near Kappaloor

2/10



C.M.A.(MD).No.1147 of 2017

Salaiyammal temple, while the deceased Ramamoorthy travelled as a pillion rider in TVS XL bearing registration No.TN-58-Z-3492, which was driven by one Ganesh. Due to the over speed of the said vehicle, the said Ganesh, who was riding the motorcycle, was not able to control the vehicle and the vehicle fell into a pit. As the result of which, both of them fell down and the deceased Ramamoorthy sustained grievous injuries and he was taken to Thirumangalam Government Hospital in 108 ambulance. Thereafter, he was further sent to Rajaji Medical Hospital for better treatment and thereafter, he was further admitted in Apollo Hospital and he was treated as in patient till 01.05.2012 and thereafter, he died on the same day at 07.00 p.m. Seeking a compensation of Rs.9,00,000/-, the petitioners have filed the claim petition.

4.The first respondent is the owner of the motor cycle TVS XL bearing registration No.TN-58-Z-3492 and the second respondent is the insurance company, with which the vehicle was insured. The second respondent has filed a counter refuting all the allegations set forth in the claim petition.



C.M.A.(MD).No.1147 of 2017

5.The learned Tribunal has framed four issues. Two witnesses P.W. 1 and P.W.2 were examined on the side of the petitioners and 7 documents Ex.P1 to Ex.P7 were marked. Two witnesses R.W.1 and R.W. 2 were examined on the side of the respondents and five documents Ex.R1 to Ex.R5 were marked. The 1st respondent was called absent and set exparte. On the basis of oral and documentary evidence and on the basis of arguments submitted by respective parties, the learned Tribunal proceeded to conclude that the accident had happened due to the rash and negligent driving of the driver of the first respondent.

6.On the basis of the post mortem certificate marked as Ex.P5, the learned Tribunal concluded that the deceased was 45 years old. Though it was claimed by the petitioners that the deceased earned a sum of Rs.7,000/- per month and since the same was not proved by any oral or documentary evidence, the learned Tribunal fixed the notional income of the deceased as Rs.6,500/-. The yearly income of the deceased was calculated as Rs.78,000/- (Rs.6,500x12) and after deducting 1/3rd towards personal income of the deceased, 2/3rd of the income of deceased of Rs. 52,000/- [Rs.78,000-26,000 (78,000x1/3)] was fixed as contribution



C.M.A.(MD).No.1147 of 2017

towards family. As per the dictum laid down by the Hon'ble Apex Court in the case of ***Sarala Varma and others v. Delhi Transport Corporation and others*** reported in ***AIR 2009 (SCC) 3104***, the relevant multiplier '14' was adopted. The compensation under the head loss of dependency was arrived at Rs.7,28,000/- (Rs.52,000x14). The learned Tribunal has passed an award under the following heads:-

Head	Compensation awarded
(I) Loss of dependency:	Rs.7,28,000/-
(ii) Medical Expenses:	Rs.2,36,360/-
(iii) Funeral Expenses:	Rs.15,000/-
(iv) Transportation Expenses:	Rs.5,000/-
(v) Extra Nourishment during treatment:	Rs.1,000/-
(vi) Damage to cloth:	Rs.1,600/-
Total compensation awarded:	Rs.9,86,960/- with interest @ 7.5 % from the date of the claim until the realization and costs.

7. Challenging the same, the appellant/second respondent/insurance company has filed this Civil Miscellaneous Appeal on the ground that the learned Tribunal ought not to have considered the age of the deceased as 45 but only as 46 and should have applied the multiplier '13' instead of '14' for arriving compensation. It was further contended by the learned



C.M.A.(MD).No.1147 of 2017

counsel for the appellant/second respondent that the learned Tribunal deduced 1/3rd towards personal expenses and has wrongly taken 2/3th for loss of dependency. The learned Tribunal ought to have deducted 1/2nd of income, since the deceased was bachelor. That apart the learned counsel for the appellant/second respondent vehemently contended that the petitioners being the brothers and sister respectively did not produce any record to show that they are the legal heirs or sister or brothers of the deceased and hence, the learned Tribunal is not justified in passing an award in favour of the petitioners.

8.Per contra the learned counsel for the respondents 2 and 3/petitioners submitted that there is no infirmity in the calculation made by the learned Tribunal and hence, the award need not be interfered with.

9.A careful perusal of the materials available on record would reveal that the post mortem certificate of the deceased was marked as Ex.P2 and the age of the deceased has been mentioned in the post mortem certificate as 46 years. However, the learned Tribunal had proceeded to fix the age of the deceased as 45 years on the basis of the



C.M.A.(MD).No.1147 of 2017

death certificate as Ex.P5.

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10. In view of the same, I find it necessary that the learned Tribunal ought to have considered the age of the deceased as 46 years on the basis of the post mortem certificate as Ex.P2 and should have adopted the multiplier '13' in term of **Sarala Varma** case. That apart considering the fact that the deceased was unmarried, adopting **Sarala Varma** case, the learned Tribunal ought to have treated 50% of the income towards personal and living expenses of the deceased and 50% of the income towards contribution to the family. Only if the family of the bachelor is large and the dependent on the income of the deceased as in the case where he has widowed mother and large number of non earning sisters or brothers, his personal and living expenses may be restricted to 1/3rd and contribution can be taken 2/3rd. However, in the instant case, the petitioners are two brothers and one married sister. At the time of filing claim petition in the year 2014, the first claimant was aged about 62 years and the second claimant was aged about 47 years and the third claimant was 45 years old and she is the wife of one Ramani.



C.M.A.(MD).No.1147 of 2017

11.A careful perusal of the evidence of P.W.1 Visalakshmi, third petitioner, would reveal that she had admitted that she has been residing with her husband and she is not dependent on the income of the deceased. The contents of FIR which was marked as Ex.P1 would reveal that the petitioners namely R.Sankaranarayanan, R.Lakshmanan, R.Visalakshmi are residing separately in different places and none of them were living along with the deceased Ramamoorthy. It could be understood that none of the petitioners are the dependants of the deceased and it is pertinent to mention that they have neither produced any legal heir certificate nor decree from the competent Court to declare that they are the legal heirs of the deceased Ramamoorthy. In the absence of the same and having understood that they were not at all depending upon the income of the deceased at any point of time and the first petitioner R.Sankaranarayanan has already passed away and Visalakshmi was living with her husband and she never lived with deceased and the second petitioner has also given a complaint before the jurisdictional police station that they were living separately in various places, this Court is of the considered view that the learned Tribunal ought not to have allowed the M.C.O.P., thereby, awarding compensation in favour of



C.M.A.(MD).No.1147 of 2017

the petitioners.

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12. Accordingly, the Civil Miscellaneous Appeal stands allowed and the award passed by the learned Tribunal is hereby set aside. The second respondent/insurance company is entitled to withdraw the award amount, if any already deposited before the learned Tribunal. The petitioners/claimants are directed to refund the award amount to the credit of M.C.O.P.No.44 of 2014 before the learned Additional Motor Accidents Claims Tribunal/Subordinate Judge, Aruppukottai, if any already withdrawn. There shall be no order as to costs.

29.01.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Mrn

To

1.The Motor Accidents Claims Tribunal,
(Subordinate Judge), Aruppukottai.

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

9/10



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C.M.A.(MD).No.1147 of 2017

L.VICTORIA GOWRI, J.

Mrn

C.M.A.(MD)No.1147 of 2017

29.01.2024