



CMA.(MD)No.1148 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No.1148 of 2022

and

CMP (MD) No.11788 of 2022 & 4432 of 2024

M/s.National Insurance Co. Ltd.,
Through its Branch Manager,
No.33, Rasi Plaza,
West Pradhakshinam Road,
Karur.

: Appellant/3rd Respondent

Vs.

1.Vijayalakshmi

2.Sindhu

3.Minor Naveen

4.Minor Sabari

(Minors 3 and 4 rep. by
their Guardian and Mother
Respondent No.1)

5.Chinnammal

: Respondents 1 to 5/
Petitioners

6.P.Balamurugan

: 6th Respondent/R1

7.P.Periyasamy

: 7th Respondent/R2

8.Priya

9.Minor Iniya Tamil

(Respondent No.9/Minor
rep by her Mother and
Guardian R8)

: R8 and R9/R4 and R5

PRAYER:-Civil Miscellaneous Appeal is filed under
Section 173 of the Motor Vehicles Act, to set aside the
judgment and decree, dated 20/06/2022 passed in MCOP No.
31 of 2019 on the file of the MACT/Additional District
Judge, Karur.



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For Appellant : M/s.P.Malini
For R1 to R5 : No appearance
For R6 and R7 : Given Up
For R8 and R9 : Mr.N.Shanmuga Selvan

J U D G M E N T

This Civil Miscellaneous Appeal is filed seeking to set aside the award, dated 20/06/2022 passed in MCOP No.31 of 2019 by the MACT/Additional District Judge, Karur.

2.The facts in brief:-

On 20/08/2014 at about 09.15 am, one Subramaniyan was riding a two wheeler bearing registration No.TN-40-Y-4532 with one Namachivayam as pillion rider on Kovai-Karur Road from west to east direction. When they were nearing the place of occurrence, the first respondent Lorry bearing registration No.TN-04-B-5925 was driven by its driver in a rash and negligent manner and hit the two wheeler. As a result of which, Namachivayam sustained grievous injuries and died on the spot.

3.A case in Crime No.512 of 2014 was registered by the Karur Town Police for the offences under sections



279, 337, 304(A) IPC. Seeking compensation of Rs.20,00,000/-, the dependents filed the claim petition.

4.That was resisted by the appellant Insurance Company stating that the rider of the two wheeler was not having any proper driving licence; he suddenly crossed to the opposite direction and invited the accident.

5.IA No.315 of 2017 was filed by the respondents 4 and 5 in the main petition stating that they are also the dependents born through the second wife. That was allowed and they were impleaded as the respondents 4 and 5. We need not concentrate much upon the inter dispute between the parties before the Tribunal.

6.On the side of the claimants, 3 witnesses were examined and 7 documents were marked. On the side of the Insurance Company, 2 witnesses examined and 9 documents marked.

7.At the conclusion of the enquiry, regarding the aspect of negligence, the Tribunal recorded a finding that it is a case of hit behind. The first respondent vehicle driver owns responsibility and accordingly, liability was fixed upon him.



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8.Regarding the compensation amount, the Tribunal on the basis of the postmortem report, fixed the age as 38 years and fixed the monthly income of the deceased as Rs.12,000/-. '15' was taken as multiplier. $1/5^{\text{th}}$ of the amount was deducted towards personal and living expenses of the deceased. By doing so, the loss of income of the deceased was assessed at Rs.17,28,000/-. To that, conventional amounts were added. Totally, the Tribunal awarded the total compensation as per tabulation given hereunder:-

Loss of future income	Rs.17,28,000/-
Loss of consortium	Rs. 2,40,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Transport expenses	Rs. 10,000/-
Total	Rs.20,08,000/-

9.Against which, this appeal is preferred by the appellant on the ground that the age of the deceased was 42 at the time of the occurrence. The age fixed by the Tribunal is not correct. According to them, the age mentioned in the Voter ID Card must be taken into account. Apart from that, one fourth of the income ought to have been deducted towards personal and living expenses and not $1/5^{\text{th}}$.



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10.Heard both sides.

11.Regarding the negligent aspect, no argument was advanced.

12.From the nature of the occurrence, it is a case of hitting behind, naturally, the driver of the first respondent vehicle owns responsibility towards it. So, no further discussion is required, since no ground was made by the appellant. So, the finding of the Tribunal on that aspect is confirmed.

13.Regarding the quantum, as mentioned above, the income of the deceased was fixed at **Rs.12,000/-** notionally due to the absence of any direct evidence of income. Even though, it was stated that he was working as Contractor in a Textile Company and used to supply labourers to the Textile Units and earning Rs.20,000/- per month, fixation of amount at the rate of Rs.400/- per day cannot be considered to be excessive. So, that amount requires no interference.

14.Regarding the age, as mentioned above, it is stated as 32 in the Family Card. No Birth Certificate is



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available. Only approximately, the age might have been mentioned in the Voters ID Card. In the Voters ID Card, it is noted that on 01/01/2006 his age is 33. The date of occurrence is 20/08/2014. If we calculate the age and the date of the birth, his age is **41**. But, as mentioned above, in the absence of Birth Certificate, the age mentioned in the Voters ID must be taken as correct one, so also the entry made in the postmortem report.

15.As mentioned above, fixation of notional income by the Tribunal at **Rs.12,000/-** per month is reasonable. The Tribunal has not added any amount towards future prospects. As per the judgment of the Hon'ble Supreme court in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017)16 SCC 680***, 25% is to be added towards future prospects. If 25% is added towards future prospects I.e., Rs.3,000/- (Rs.12,000/- x 25/100), the income would be Rs.15,000/- (Rs.12,000 + 3,000). Since the dependents are 5, 1/4th is to be deducted. If 1/4th is deducted towards personal and living expenses of the deceased, it comes to **Rs.11,250/-**. Since the age of the deceased was 41 at the time of the occurrence, by applying multiplier '**14**', the loss of dependency is calculated as **Rs.18,90,000/-** (Rs.11,250/- x 12 x 14).



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16.Regarding the conventional amounts, in the light of the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd., Vs. Pranay Sethi and others (2017(2)TN MAC 609 SC)**, it requires recalculation The award of the Tribunal is recalculate as per the tabulation given hereunder:-

Head	Award of the Tribunal	Award of this court
Loss of future income	Rs.17,28,000/-	Rs.18,90,000/-
Loss of consortium	Rs. 2,40,000/-	Rs. 40,000/-
Loss of estate	Rs. 15,000/-	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
Transport expenses	Rs. 10,000/-	-
Filial consortium to the claimants 2 to 5	-	Rs. 1,60,000/-
Total	Rs.20,08,000/-	Rs.21,20,000/-

17.With the above said modification, this Civil Miscellaneous Appeal is **partly allowed**. The award of the Tribunal is modified as **Rs.21,20,000/-**. The appellant Insurance Company is liable to pay the modified award amount together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with proportion costs. The claimants are entitled to get their respective shares as per the apportionment of the Tribunal. The claimants are directed to pay the



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court fee for the enhanced amount. No costs.

Consequently, connected Miscellaneous Petitions are closed.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal,
Additional District Judge,
Karur.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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CMA (MD) No. 1148 of 2022

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