



CMA.(MD)No.1184 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/06/2024

CORAM

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

CMA(MD)No.1184 of 2021

and

CMP(MD)No.11392 of 2021

National Insurance Company Limited,
Represented by its Branch Manager,
No.11, Jerome Building,
1st Floor, Fort Station Road,
Trichy-2. : Appellant/2nd Respondent

Vs.

1.Pushpamary
2.A.U.Charista Judy
Respondents both are
represented by their
Power Agent M.Balthasar : Respondents 1 and 2/
Petitioners

3.C.Muthaiah : 3rd Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree in MCOP No.1820 of 2021, dated 30/04/2021 on the file of the Motor Accident Claims Tribunal, 1st Additional District and Sessions Court (PCR), Tiruchirappalli.

For Appellant : Mr.J.S.Murali

For R1 and R2 : Mr.C.Vakeeswaran

For 3rd Respondent : No appearance



CMA.(MD)No.1184 of 2021

J U D G M E N T

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This Civil Miscellaneous Appeal is filed seeking an order to set aside the the judgment and decree passed in MCOP No.1820 of 2021, dated 30/04/2021 by the Motor Accident Claims Tribunal/1st Additional District and Sessions Court (PCR), Tiruchirappalli.

2.The facts in brief:-

On 25/01/2012 at about 09.00 am, the deceased Arulandham was crossing the Trichy-Tanjore Highways Road near Sakthinager Bus stand on the pedestrian way. At that time, he was hit by a two wheeler bearing registration No.TN-48-R-3058 driven by the first respondent driver in a rash and negligent manner. He was taken to the hospital, underwent surgery, but did not recover from the accidental injuries. He died on 11/02/2012. At the time of the occurrence, he was doing real estate business and earning a sum of Rs.15,000/- per month. He was an ex-employee of BHEL. The dependents claiming compensation of Rs.10,00,000/- filed the claim petition.

3.That was resisted by the appellant by filing counter stating that the deceased carelessly without observing the traffic, suddenly crossed the road and invited the accident.



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4. Before the Tribunal on the side of the claimants, 4 witnesses examined and 14 documents marked. On the side of the Insurance Company, 2 witnesses examined and no document marked. Apart from that, 6 documents marked through the witnesses as Exs.X1 to X6.

5. At the conclusion of the trial process, regarding the negligence, the Tribunal recorded a finding that it occurred due to rash and negligent driving on the part of the first respondent vehicle driver.

6. Regarding the compensation amount, considering the age as well as the working capacity of the deceased, it assessed the monthly income at Rs.9,000/-. By adopting the multiplier 7, it arrived at the compensation under the head of loss of income as Rs.5,04,000/-. To that, conventional amounts were added and finally, it arrived at Rs.9,43,000/- as per the tabulation given hereunder:-

Loss of Income	Rs.5,04,000/-
Funeral expenses	Rs. 15,000/-
Loss of consortium, Love and affection for the 1 st petitioner	Rs. 40,000/-
Loss of love and affection for the 2 nd petitioner	Rs. 40,000/-
Loss of estate	Rs. 15,000/-
Medical bills (Ex.X3, X4)	Rs.3,07,233/-
Attender expenses (17 days)	Rs. 17,000/-
Transportation expenses	Rs. 5,000/-
Total	Rs.9,43,233/-



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CMA.(MD)No.1184 of 2021

7. Against which, this appeal is preferred.

8. Heard both sides.

9. Regarding the negligent aspect, it is submitted by the appellant that when there was sudden crossing by the deceased, naturally contributory negligence ought to have been fixed. Having recorded a finding by the Tribunal that the deceased was crossing the road, fixation of the entire responsibility upon the first respondent vehicle is not proper. It is in evidence to say that the deceased was crossing the road, at that time, it appears that the occurrence said to have been taken place.

10. The learned counsel appearing for the respondents 1 and 2 by relying upon the judgment of this court in ***Pallavan Transport Corporation Ltd., rep. by Managing Director, Pallavan Salai, Madras-600 002 Vs. Dhanalakshmi and another [2004(2) TN MAC 99 (DB)*** would contend that simply because the deceased was crossing the road, no conclusion can be reached that he also contributed to the occurrence.

11. The manner of the occurrence must be taken into account while deciding the negligent aspect. Here the



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first respondent remained *ex-parte*. Only the rider of the first respondent is competent to speak about whether there was sudden crossing or not.

12. Reading of the FIR shows that the deceased was crossing the road in pedestrian area. PW1 is stated to be the eye witness. Against this oral evidence, as mentioned above, the rider of the two wheeler was not examined on the side of the appellant. In the absence of any such evidence on the side of the appellant, no other witness was examined.

13. The rough sketch drawn by the Investigating Officer during the course of the investigation also indicates that in the mud portion of the road the occurrence said to have taken place. So, it is seen that the deceased crossing the road in the pedestrian zebra crossing. At that time, the first respondent vehicle driver without notice the crossing, dashed against the deceased. So the manner in which the occurrence took place clearly indicates that the first respondent vehicle was responsible for the occurrence. The first respondent vehicle driver was acquitted in the criminal case. But no documentary evidence is produced to show the same. Even if it is so that he was acquitted it will not bind the



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CMA.(MD)No.1184 of 2021

Tribunal to arrive at the correct conclusion on the basis of the evidence on record. So this ground is not available to the appellant.

14.Regarding the assessment of monthly income, it is submitted that the age of the deceased was about 65 years, multiplier adopted was 7. Regarding the income, notional income was taken into account as Rs.9,000/- considering the working capacity of the deceased. I find absolutely no reason to interfere into that aspect. After following the proper procedure, the total Loss of Income was arrived at Rs.5,04,000/-. To that, loss of consortium, being the wife, loss of love and affection for the second petitioner was assessed at Rs.40,000/- each. Actually, it should not termed as love and affection and it should be termed as parental consortium. I find that the amount also requires no interference.

15.The further argument on the side of the appellant is that the medical expenses were calculated without proper proof. He would submit that only Xerox copies have been produced and it bears no seal of the concerned hospital.



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CMA.(MD)No.1184 of 2021

16.Per contra, the learned counsel appearing for the respondents 1 and 2 would submit that to prove the medical expenses, PW2 was examined. He has also verified and confirmed the bills. So it is seen that the medical expenses have also been properly proved by the claimants. On that aspect also, it requires no interference.

17.The award amount has been fixed in a just and reasonable manner, it requires no interference.

18.In the result, this Civil Miscellaneous Appeal is **dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

05/06/2024

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

- 1.The Motor Accident Claims Tribunal/
1st Additional District and Sessions Judge,
(PCR), Tiruchirappalli.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA.(MD)No.1184 of 2021

G.ILANGOVAN, J

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CMA (MD) No. 1184 of 2021

05/06/2024