

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.12.2023

PRONOUNCED ON : 10.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.575 of 2019
and C.M.P.(MD)No.6995 & 6996 of 2019

National Insurance Company Limited,
Represented by its Branch Manager,
Having office at Door No.5-A, Opposite to Court Campus,
Sub Collector Office Road,
Dindigul Town. ... Appellant

Vs.

1.Selvi
2.Murugan
3.The District Collector,
Dindigul ... Respondents
(3rd respondent is suo moto impleaded vide
Court order dated 28.10.2022 made in
C.M.A.(MD)No.575 of 2019 by RTJ)

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 27.11.2017 passed in M.C.O.P.No.383 of 2015 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dindigul.

For Appellant	: Mr.A.S.Mathialagan
For R1	: Mr.N.Sudhagar Nagaraj
For R3	: Mr.N.Muthu Vijayan, Spl. G.P.
For R2	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed as against the judgment and award on certain counts, passed by the learned Motor Accident Claims Tribunal, at Dindigul District, in M.C.O.P.No.383 of 2015, dated 27.11.2017 by the appellant/second respondent/insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.383 of 2015.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is a fatal case. The petitioner is the wife of the deceased. The deceased Sekar was a mason earning Rs.15,000/- per month. On 08.10.2013, when the deceased Sekar came from his work at 08.30 p.m., in his bicycle along Trichy to Dindigul National Highway Road, at

Vellabommanpatti, the first respondent riding his Hero Honda Splender Plus bearing registration No.TN57-AE-6364 in a rash and negligent manner travelling in the same direction dashed as against the said bicycle driven by the deceased from behind. As the result of which, the deceased sustained grievous injuries and died on the spot. On the basis of the complaint given by the petitioner, Vadamadurai Police registered a case in Crime No.325 of 2012 as against the first respondent. Seeking compensation of Rs.20,00,000/-, the petitioner has filed this claim petition.

4.The first respondent is the owner of the Hero Honda Splender Plus bearing registration No.TN57-AE-6364 and the second respondent is the insurance company with which the vehicle was insured. The second respondent has filed a counter refuting each and every allegations set forth in the claim petition.

5.The learned Tribunal had framed two issues. Two witnesses P.W. 1 and P.W.2 were examined on the side of the petitioner and Ex.P1 and Ex.P8 were marked. Three witnesses R.W.1 to R.W.3 were examined and

Ex.R1 to Ex.R3 were marked on the respondents. The 1st respondent was called absent and set exparte. On the basis of oral and documentary evidence and 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 rider of the two wheeler bearing registration No.TN57-AE-6364. The learned Tribunal further held that the respondents 1 and 2 are liable to pay the compensation to the petitioner, since the vehicle was insured with the second respondent insurance company. Hence, the second respondent insurance company is directed to indemnify the first respondent. On the basis of the post mortem certificate, Ex.P3, the age of the deceased was taken as 50 years. Though it was claimed by the petitioner that the deceased was earning Rs.15,000/- per month in masonry work. The learned Tribunal fixed the notional income as Rs.6,000/- per month and hence, the annual income of the deceased was calculated at Rs.72,000/- (Rs.6,000x12). After deducting 1/3rd towards personal income, the contribution towards family was calculated as Rs.48,000/- [Rs.72,000-24,000 (72,000x1/3)]. The relevant multiplier '13' was adopted as per the judgment of 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 compensation under the head loss of dependency was arrived at Rs. 6,24,000/-. The learned Tribunal has passed award under following heads:-

Head	Compensation awarded
(I) Loss of Dependency:	Rs.4,68,000/-
(ii) Funeral Expenses:	Rs.25,000/-
(iii) Transportation:	Rs.25,000/-
(iv) Loss of love and affection:	Rs.1,00,000/-
Total compensation awarded:	Rs.6,18,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6.Challenging the same, the appellant/second respondent/insurance company has filed this Civil Miscellaneous Appeal.

7.The learned counsel for the appellant/second respondent submitted that the learned Tribunal ought to have noted that the FIR, Ex.P1 has elaborated the accident as hit and run case and hence, the liability shall not be fixed on the first respondent. It was further argued that the learned Tribunal ought to have appreciated the evidence of R.W.

3 Dr.Panchali who deposed that the crush injury of head could happen only by a heavy vehicle and there is no possibility of the same by a two wheeler. That apart, the learned Tribunal ought to have taken note of the fact that the complaint had to be lodged by the second respondent on 25.05.2017 seeking to investigate the death of the deceased by change of investigation to CBCID.

8.However, a perusal of the materials available on record would reveal that R.W.3, Dr.Panchali was the doctor who conducted post mortem on the body of the deceased Sekar. Though a specific question asked to him is that whether the two wheeler could cause a crushing head injury in any accident, he had diligently replied that the same would depend upon the speed of the two wheeler concerned, though he had admitted that if any heavy vehicle ran over the person, there is very possibility of crushing head injury.

9.A careful analysis of the expert opinion would reveal that the possibility of crushing head injury could be caused by a two wheeler running along the deceased person in a high speed cannot be ruled out.

10. That apart the learned Tribunal has proceeded to pass an order of compensation under the head of loss of love and affection as Rs. 1,00,000/-, which is exorbitant. Following the dictum laid down in ***Magma General Insurance Co. Ltd. v Nanu Ram and others*** reported in ***2018 ACJ 2782 (SC)***, the same should have been Rs.40,000/-. Hence, the petitioner is entitled only to Rs.40,000/- towards the loss of love and affection.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Reduced/ Confirmed
(I) Loss of Dependency:	Rs.4,68,000/-	Rs.4,68,000/-	Confirmed
(ii) Funeral Expenses:	Rs.25,000/-	Rs.25,000/-	Confirmed
(iii) Transportation:	Rs.25,000/-	Rs.25,000/-	Confirmed
(iv) Loss of love and affection:	Rs.1,00,000/-	Rs.40,000/-	Reduced
Total compensation awarded:	Rs.6,18,000/-	Rs.5,58,000/-	Reduced

11. The petitioner/claimant is entitled to a sum of Rs.5,58,000/- as compensation. The second respondent/insurance company is directed to

deposit Rs.5,58,000/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the award amount as per apportionment made by the learned Tribunal, after deducting any amount received by her earlier without filing any formal petition before the Tribunal. The second respondent/insurance company are entitled to withdraw the excess amount, if any. The petitioner/claimant is not entitled for interest for the default period, if there is any.

12. Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

10.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

- 1.The Motor Accidents Claim Tribunal,
Principal District Judge, Dindigul.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD).No.575 of 2019

L.VICTORIA GOWRI, J.

Mrn

C.M.A.(MD)No.575 of 2019

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