



C.M.A.(MD).No.810 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.810 of 2019

The National Insurance Company Limited,
Represented by its Branch Manager,
2nd Floor,
81 D, Chetti Road Bus Stand Opposite,
Namakkal District.

... Appellant/2nd Respondent

-vs-

1. Praveena

2. Minor. Meenakshi

3. Minor. Lakshmi

4. Vasakar

... Respondents 1 to 4/Petitioners

(Minor Respondents 2 and 3 are
represented by their mother and
guardian)

5. Ramesh

... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decreetal order passed in M.C.O.P.No.90 of 2013, dated 22.11.2017, on the file of the Motor Accident Claims Tribunal, Sub Court, Uthamapalaym, Theni.



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For Appellant : Mr.D.Rajkumar
For R-1 to R4 : Mr.G.Vanjinathan
For R-5 : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, against the award passed in M.C.O.P.No.90 of 2013, on the file of the Motor Accident Claims Tribunal, Sub Court, Uthamapalaym, Theni, challenging the finding on negligence and quantum.

2. According to the claimants, the deceased was riding a two wheeler and when he had overtaken the bus and he was moving on the corner of the road, a Torus lorry owned by the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the two wheeler. Due to the said impact, the rider of the two wheeler had passed away. The claimants have further contended that the deceased was aged about 44 years and he was owning agricultural properties in Tamil Nadu and Kerala and out of the said properties, he was earning a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as income. The claimants have prayed for compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only).



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3. The Appellant/Insurance Company has filed a counter contending that the deceased alone had driven the vehicle in a rash and negligent manner and he had overtaken the bus without noticing the upcoming lorry from the opposite direction. Hence, they are not liable to pay any compensation.

4. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the lorry driver and mulcted the liability on the Insurance Company. The Tribunal further found that the deceased would be earning a sum of Rs.10,000/- (Rupees Ten Thousand only) per month and applied multiplier of “15” and arrived at a total compensation of Rs.15,70,000/- (Rupees Fifteen Lakhs and Seventy Thousand only). Challenging the said award, the present appeal has been filed by the Insurance Company.

5. According to the learned counsel appearing for the appellant/ Insurance Company, when the deceased was not careful while overtaking the moving bus and has resulted in the accident, the entire negligence ought not to have been mulcted upon the driver of the lorry. He further contended that



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the age of the deceased 44 years. The correct multiplier is only “14” not “15”.

Hence, he prayed for modification of award passed by the Tribunal.

6. Per contra, the learned counsel appearing for the respondents 1 to 4/ petitioners had contended that since future prospects have not been added to the income of the deceased person, the award of the Tribunal may be enhanced and he further contended that the accident has taken place only due to the negligence on the part of the lorry driver.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. A perusal of the oral evidence clearly indicates that the claimants have examined occurrence witness as P.W.2. He has specifically stated that the accident has taken place only due to the rash and negligent driving on the part of the lorry driver. No contradictory evidence has been let in on the side of the lorry owner or the insurer. In such circumstances, this Court is of the considered view that the finding arrived at by the Tribunal with regard to the fixing of the negligence on the part of the lorry driver is correct and ultimately, the Insurance Company is liable to pay the compensation.



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9. The claimants have contended that the deceased had vast extent agricultural land from which he was earning a sum of Rs.10,000/- (Rupees Ten Thousand only) per month. This has been accepted by the Tribunal as notional income and award has been passed. Since the deceased was owning agricultural properties, the income would get reduced only to the extent of salary for a Supervisor for supervising the agricultural operations. The claimants would not lose the entire income from the agricultural properties. Therefore, the question of adding future prospectus does not arise.

10. As rightly pointed out by the learned counsel appearing for the appellant, the age of the deceased being 44 years, correct multiplier is “14” not “15”. Therefore, this Court is inclined to set aside the multiplier of “15” and fixing the multiplier of “14”.

11. In view of the above said deliberations, the award of the Tribunal is reassessed as follows:

Loss of income at (Rs.10,000x14x12=Rs.16,80,000/-) 1/4th deduction of personal expenses = Rs. 4,20,000/-.



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Loss of Dependency	: Rs.12,60,000/-
Funeral expenses	: Rs. 20,000/-
loss of love and affection	: Rs. 1,60,000/-
Loss of Estate	: <u>Rs. 15,000/-</u>
Total	: <u>Rs.14,55,000/-</u>

12. The award of the Tribunal is modified from Rs.15,70,000/- to a sum of Rs.14,55,000/- (Rupees Fourteen Lakhs and Fifty Five Thousand only). The 1st claimant/wife is entitled to Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only), the minor claimants 2 and 3 are each entitled to Rs.4,00,000/ (Rupees Four Lakhs only) and the 4th claimant is entitled to Rs.1,05,000/- (Rupees One Lakh and Five Thousand only). The award amount shall be deposited by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. The award amount shall carry interest at the rate of 7.5% from the date of claim petition. In respect of the minor claimants/respondents 2 and 3, the amount shall be deposited in a Nationalized Bank till they attain majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months.



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13. Accordingly, this Civil Miscellaneous Appeal stands partly allowed.

There shall be no order as to costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal,
Sub Court,
Uthamapalaym,
Theni.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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