



C.M.A.(MD).No.505 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.505 of 2024

1.M.Selvam

2.S.Kala

... Appellants/Petitioners

Vs.

1.V.Marimuthu

2.M/s.The New India Assurance Co. Ltd.,

Thro. Its Branch Manager,

CMTS Bhavan, 70 Feet Road,

Ellis Nagar,

Madurai – 625 010.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award made in M.C.O.P.No. 1787 of 2021, on the file of the Motor Accident Claims Tribunal (District and Sessions Judge/ Communal Clash Cases Court), Madurai dated 30.03.2023.

For Appellants : Mrs.K.B.Shiva Shankari

For Respondents : Mr.M.S.Suresh Kumar for R2

R1 – No Appearance



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JUDGMENT

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This appeal has been filed to set aside the award made in M.C.O.P.No.1787 of 2021, on the file of the Motor Accident Claims Tribunal (District and Sessions Judge/ Communal Clash Cases Court), Madurai dated 30.03.2023.

2.The facts in brief:

On 16.07.2022, at about 05.15 p.m., the deceased Ram Prasad as a pillion rider travelled in the motor cycle bearing registration No.TN 65 R 4425, which was driven by one Bala Murugan, who is his friend, on the Dindigul Bypass Road – Madurai Main road. At that time a lorry bearing registration No.TN 64 K 8245 was found parked in the middle of the road without making any indicators. Due to the darkness, the motor cycle hit the lorry behind. Both fell down and sustained injuries. Both were taken to the Madurai Government Rajaji hospital. Balamurugan declared as dead on the date of occurrence itself and Ram Prasad taken treatment till 16.07.2022, but, succumbed injuries.

3.He was aged about 18 years at the time of occurrence and doing



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B.Sc., IT First year in American College, Madurai. Claiming compensation amount of Rs.30,00,000/-, claim petition was filed by his parents.

4.That was resisted by the Insurance Company, stating that lorry was parked on extreme left side of the road. There was enough space on the right side of the lorry. At the time of occurrence namely at about 5.15 p.m., there was no darkness. The rider of the two wheeler without noticing the parking vehicle drove the vehicle in rash and negligent manner and hit the lorry behind. Moreover, the deceased was not wearing helmet. So the Insurance Company cannot be fastened with liability.

5.In the occurrence, both the rider and pillion rider died. Claim application in M.C.O.P.No.126 of 2022 was filed in respect of the deceased rider Balamurugan and M.C.O.P.No.1787 of 2021 was filed in respect of the deceased pillion rider Ram Prasad.

6.Regarding the first point of negligence, the Tribunal recorded a finding that not only the rider of the two wheeler namely Balamurugan,



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but, also the driver of the lorry was responsible for the occurrence and the ratio of negligence was fixed as 30/70 namely Balamurugan contributed negligence of 30% and the first respondent namely the lorry driver, it was fixed as 70%.

7.Regarding the compensation for the death of Ram Prasad, the age of the deceased was fixed at 18 years. Multiplier 18 was taken. Notional income of Rs.10,000/- was taken. 40% was added towards future prospects. Half of the amount was deducted as living and personal expenses and finally loss of dependency was fixed at Rs.15,12,000/-. To that customary amounts were added and in the result, Rs.16,22,000/- was awarded as total compensation. Out of the above said amount Rs. 11,35,400/- was awarded after deducting 30% towards contributory negligence.

8.Aggrieved over the quantum, this appeal is preferred.

9.The learned counsel for the appellant would submit that contributory negligence was fixed only upon the rider of the two wheeler



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and deducting 30% from the total compensation amount for the pillion rider is not proper.

10.Per contra, the learned counsel for the respondent would submit that the deceased was not wearing any helmet during the relevant time. So it has contributed towards his death and it must be taken into account while assessing the compensation.

11.Regarding the first point of negligence, there is no counter appeal or cross appeal or independent appeal by the claimants, claimants of Balamurugan or by the Insurance company. So that part of the finding with regard to the contributory negligence between Balamurugan and driver of the first respondent in the main vehicle driver requires no interference.

12.Even on facts, it is seen that it is not a night occurrence. It is evening occurrence. The time was 5.15 p.m. in the evening. So it is not dark and enough light was available. But, in spite of that it appears that he drove the vehicle without noticing the parked vehicle and dashed. So



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fixed 30% on one side and 70% on the first respondent vehicle cannot be found fault. That part of the finding is confirmed.

13.Regarding the compensation, absolutely, there is no evidence on record to show the notional income of the deceased. It is simply stated that the deceased was studying first year B.Sc., IT in American College, Madurai. So on that basis the notional income has to be taken. Normally for College students of Engineering Graduate Students, the notional income can be fixed between Rs.15,000 to Rs.20,000/-, in the absence of any job and income certificates. So taking Rs.15,000/- as notional income for the deceased would be proper. So the notional income fixed by the Tribunal is enhanced to Rs.15,000/-. 40% of the future prospects may be added ($\text{Rs.15,000} + \text{Rs.6,000} = \text{Rs.21,000}$). Half of the amount shall be deducted towards personal and living expenses ($\text{Rs.21,000} - \text{Rs.10,500} = \text{Rs.10,500}$). 18 multiplier shall be adopted ($\text{Rs.10,500} \times 12 \times 18 = \text{Rs.22,68,000}$). So the loss of dependency is Rs.22,68,000/-. Other customary amounts awarded by the tribunal is hereby confirmed and the total compensation is arrived as follows:



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<i>1.The Loss of Dependency</i>	<i>- Rs.22,68,000</i>
<i>2.Loss of Estate</i>	<i>- Rs. 15,000</i>
<i>3.Funeral Expenses</i>	<i>- Rs. 15,000</i>
<i>4.Consortium</i>	
<i>(1st Petitioner and 2nd Petitioner)</i>	<i>- <u>Rs. 80,000</u></i>
<i>Total Compensation</i>	<i>- Rs.23,78,000</i>
<i>Deducting 30%</i>	<i>- <u>Rs. 7,13,400</u></i>
	<i>- <u>Rs.16,64,600</u></i>

So this Court enhanced the compensation into Rs.16,64,000/-. The above said compensation amount Rs.16,64,000/- is liable to be made by the Insurance Company on behalf of the Insurer.

14.Accordingly, this appeal is partly allowed. No costs.

(i)The quantum of compensation awarded by the Tribunal is enhanced to Rs.16,64,000/- (Sixteen Lakhs and sixty Four Thousand only), which shall carry interest at the rate of 7.5% per annum.

(ii) The insurance company is directed to deposit the entire compensation of Rs.16,64,000/- (Sixteen Lakhs and sixty Four Thousand only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of the above said MCOP before the



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tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants are permitted to withdraw the entire award amount of Rs.16,64,000/- (Sixteen Lakhs and sixty Four Thousand only) after following the due process of law, less any amount already received by them.

31.07.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The District and Sessions Judge, (Motor Accident Claims Tribunal / Communal Clash Cases Court), Madurai
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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