



C.M.A.(MD).No.892 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.892 of 2024
and C.M.P.(MD).No.9586 of 2024

The Branch Manager,
National Insurance Co.Ltd.,
2nd Floor, Omalur Main Road,
Post Box No.27, Salem.

... Appellant/Respondent No.2

Vs.

1.Krishnaveni

2.Minor Radhakrishnan

3.Minor Sunilkumar

... Respondents 1 to 3/Petitioners.

(Minor respondents 2 and 3 represented through their mother the first respondent)

4.K.Kavitha

5.K.Navaskani

... Respondents 4 & 5/Respondents 1 & 3

6.The Branch Manager,
Oriental Insurance Co.Ltd.,
No.1, Abdul Razaak Street,
Saidapet, Chennai.

7.Baby Ammal

... Respondents 6 & 7/Respondents 4 & 5



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PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order, dated 23.12.2009 made in M.C.O.P.No.35 of 2007 on the file of Motor Accidents Claims Tribunal (Principal District Judge), Thanjavur.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.C.Karthick for R6

JUDGMENT

This appeal has been filed to set aside the fair and decreetal order, dated 23.12.2009 made in M.C.O.P.No.35 of 2007 on the file of Motor Accidents Claims Tribunal (Principal District Judge), Thanjavur.

2.The facts in brief:

On 19.07.2006, the deceased Maruthaiah and others were travelling in a tempo van bearing Registration No.TN 04 P 5515 from Chennai to Native place. When the tempo van nearing the place of occurrence a lorry bearing Registration No.TN 27 P 9349 was driven by its driver in rash and negligent manner in opposite direction and hit the van. In the accident Maruthaiah and two others died on the spot. Others sustained grievous injuries. A case in Crime No.261 of 2006 was



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registered against the offending vehicle driver. Claiming compensation amount of Rs.30,00,000/-, the claimants filed the claim petition.

3.That was resisted by the Insurance Company, who is the appellant herein by filing counter contending that the occurrence took place because of rash and negligent driving on the part of the van driver. Case was wrongly registered against the first respondent's vehicle's driver. So the second respondent in the main petition, who is the appellant herein is not liable to pay the compensation on behalf of the insurer and other customary denials were made.

4.The fourth respondent namely the Oriental Insurance Company, who is the Insurer of the Tempo van, filed a counter stating that the occurrence took place because of the rash and negligent driving of the first respondent's driver. So the fourth respondent is not liable to pay any compensation.

5.The fifth respondent in the main petition also claimed share in the compensation amount, if awarded.



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6.Regarding the first aspect of negligence, the Tribunal recorded a finding that the occurrence took place, because of the rash and negligent driving on the part of the first respondent's vehicle.

7.Regarding the compensation, the age of the deceased was fixed at 34 on the basis of the date of birth mentioned in Ex.P8, the passport. Which is supported by the documentary evidence that can be considered. 17 multiplier was adopted. The notional income of Rs.4,000/- was taken. The loss of dependency was fixed at Rs.5,44,000/-. To that customary amounts were added and finally Rs.5,62,000/- was awarded as total compensation. Against which, this appeal is preferred by the Insurance Company.

8.Regarding the first aspect of negligence, I find no reason to interfere. The manner, in which, the accident occurred itself indicates the rash driving on the part of the first respondent's driver. Both were travelling in opposite directions. If the first respondent's vehicle driver in the main petition was careful enough, he would have avoided the



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accident. PW2 suffered injuries in the occurrence. He has stated that tempo driver was driving carefully. But, not the first respondent's vehicle driver. There was no contrary evidence on the side of the appellant before the Tribunal. So the evidence of PW2, injured was taken into account by the Tribunal. I find no reason to interfere into that part of finding, in the absence of any direct evidence on the part of the appellant herein. So that part of the finding is confirmed.

9.Regarding the compensation, as mentioned above the date of birth of the deceased was 20.07.1972. On the date of accident, he was aged about 34. So the multiplier was 17 as per the settled procedure. Regarding the monthly income, it was contended by the claimants that the deceased was Carpenter by profession, but, there is no income proof. So it was taken as Rs.4,000/-, which is barest minimum. There is no counter objection by the claimants. 1/3rd was deducted towards the living and personal expenses. Loss of dependency was calculated. But the Tribunal awarded Rs.2,000/- each to the petitioners 2 and 3 and the fifth respondent, and Rs.5,000/- to the first petitioner towards consortium, which is not proper. The first petitioner is the wife. Second and third



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petitioners are the children. So they are entitled for Rs.40,000/- each. The fifth respondent is the mother, who is reported to be dead. To that other customary amounts of Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate and Rs.15,000/- for transport has to be added. Finally recalculation is made herein and the award is modified as follows:

<i>Sl. No.</i>	<i>Nature of Head</i>	<i>Award (Rs.)</i>
1.	<i>Loss of Dependency</i>	5,44,000
2.	<i>Loss of Consortium for the petitioners 1 to 3 each.(40,000 x 3)</i>	1,20,000
3.	<i>Loss of Estate</i>	15,000
4.	<i>Funeral Expenses</i>	15,000
5.	<i>Transportation Charges</i>	15,000
	<i>Total</i>	7,09,000

10. Accordingly, this Civil Miscellaneous Appeal stands dismissed and the award is enhanced.

(i) The quantum of compensation awarded by the Tribunal is enhanced to Rs.7,09,000/- (Seven Lakhs and Nine Thousand only), which shall carry interest at the rate of 7.5% per annum. To that effect the claimants must pay the deficit court fee.

(ii) The appellant/ insurance company is directed to deposit the



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entire compensation of Rs.7,09,000/- (Seven Lakhs and Nine 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 case before the 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 appellant / insurance company, the claimants are permitted to withdraw their respective shares after following the due process of law, less any amount already received by them

(iv) In respect of the minor claimants, the entire shares shall be deposited in a Nationalized Bank and the 1st claimant / mother of the minors is permitted to withdraw the interest once in three months.

(v) Consequently, connected miscellaneous petition stands closed.

No costs.

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Index : Yes / No
Internet : Yes / No
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To

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- 1.The Principal District Judge, Motor Accident Claims Tribunal,
Thanjavur.
- 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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