IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.890 of 2025
and C.M.P.No.7267 of 2025

National Insurance Company Limited,
No. 910, Niresh Complex,
Cuddalore Main Road,
Attur Town and Talu,
Salem District ... Appellant

vs.

1.Rajeswari

2.Kumaresan

3.Roja

4.Sridhar ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside decree and judgment passed in MACT O.P.No.49 of 2020, dated 15.12.2023 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Attur.

For Appellant : M/s.Surekha N B

For R1 to R3 : Mr.T.L.Thirumalaisamy

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, Subordinate Court, Attur in M.C.O.P.No.49 of 2020, dated 15.12.2023.

2. According to the respondents 1 to 3/claimants, the husband of the 1st claimant and father of the claimants 2 and 3 namely Srinivasan died in a road accident that had occurred on 01.02.2020 involving the bus belonged to the 4th respondent, insured with the appellant-Insurance Company. According to the claimants, the deceased, who was proceeding in a Splendor Pro Bike bearing Registration No.TN-77-C-1319 halted his vehicle and was speaking to his friend on the left hand side mud portion of the road. At that point of time, the bus bearing Registration No.TN-77-C-1444 belonged to the 4th respondent and insured with the appellant-Insurance Company came in a rash and negligent manner and dashed against the deceased. As a result of the accident, he died. Therefore, a claim petition was filed seeking compensation of Rs.15,00,000/-.

3. The 4th respondent-owner of the bus remained *exparte* before the Tribunal and the claim petition was opposed by the insurer of the offending vehicle on the ground that the accident had occurred only due to the negligence on the part of the deceased and it was also claimed that there was no negligence on the part of the driver of the bus insured with the appellant-Insurance Company.

4. Before the Tribunal, the 1st respondent/1st claimant was examined as PW.1 and an eye-witness was examined as PW.2. On behalf of the claimants, 12 documents were marked as Exs.P1 to P12. On behalf of the Appellant-Insurance Company, Administrative Officer was examined as RW.1 and 2 documents were marked as Exs.R1 and R2.

5. The Tribunal based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the bus insured with the appellant/Insurance Company. The compensation payable to the claimants was quantified at Rs.8,91,000/-. Aggrieved by the said award, the Appellant/Insurance Company has come before this Court.

6. The learned counsel appearing for the Appellant/Insurance Company would submit that the Tribunal committed an error in fixing negligence on the part of the driver of the bus without considering the evidence of RW.1. She further submitted that the notional income fixed by the Tribunal is without any basis.

7. The learned counsel appearing for the respondents 1 to 3/claimants would submit that the Tribunal fixed negligence on the part of the driver of the bus by proper appreciation of evidence available on record. He also submitted that the notional income fixed by the Tribunal is very meagre and the same requires enhancement.

8. In order to prove the negligence, the 1st claimant was examined as PW.1 and an eye-witness was examined as PW.2. The FIR was marked as Ex.P1. PW.1 is the wife of the deceased and she was not an eye-witness, therefore, her evidence is not useful to come to the conclusion with regard to the negligence. PW.2 is the eye-witness to the accident. It is clearly stated in the claim petition that at the time of accident, the deceased was speaking with PW.2. He clearly deposed about the negligence on the part of the

driver of the bus. Ex.P1-FIR was also filed against the driver of the bus. In these circumstances, based on evidence of PW.2, which was very well corroborated by contents of FIR, the Tribunal came to a conclusion that driver of the bus insured with the appellant was negligent in driving the vehicle and the same resulted in accident. The said finding is based on proper appreciation of evidence available on record and therefore, the same is affirmed.

9. In the claim petition it was stated by the claimants that the deceased was owning a tea shop and was earning Rs.40,000/- per month. However, in order to prove the same, the claimants have not produced any documentary evidence. The Tribunal considering the age of the deceased, which was fixed at 55 based on Ex.P3-Post Mortem Report fixed notional income at Rs.7,500/-. Taking into consideration, the date of accident, the notional income fixed by the Tribunal is very conservative one. In any event, the claimants have not filed any cross appeal seeking enhancement of compensation.

10. In these circumstances, this Court is not inclined to interfere with the quantum of compensation fixed by the Tribunal. The Tribunal rightly granted 10% enhancement towards future prospects and applied multiplier of 11. The Tribunal granted 10% enhancement towards conventional damages. In the case on hand, the accident had occurred on 01.02.2020 very well within three years from the date of delivery of judgment in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***, (dated 31.10.2017). Therefore, strictly the claimants are not entitled to 10% enhancement towards conventional damages. However, taking into consideration that the Tribunal fixed very low amount as notional income for the deceased, this Court is not inclined to set aside 10% enhancement awarded by the Tribunal under the conventional heads. Accordingly, the appellant has not made out any case to interfere with the award passed by the Tribunal.

11. The learned counsel appearing for the appellant-insurance company submitted that the Tribunal granted 9% interest and the same needs to be reduced. The accident had occurred in the year 2020, therefore,

taking into consideration the prevailing bank rate, this Court is inclined to reduce the interest awarded by the Tribunal to 7.5%.

12. With this modification, the Civil Miscellaneous Appeal is partly allowed by reducing the interest awarded by the Tribunal from 9% to 7.5%. Consequently, the connected civil miscellaneous petition is closed. No costs.

15.04.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm

To

1.The Motor Accident Claims Tribunal,

2.The Section Officer,
VR Section, High Court,
Madras.

S.SOUNTHAR, J.

dm

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