



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2017

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.285 of 2011

and

M.P(MD)No.1 of 2011

The Branch Manager,
New India Assurance Co. Limited,
Tiruchirappalli-1.

... Appellant/2nd Respondent

vs.

1.Vellaiyammal

2.Iyannar

3.Muniselvi

... Respondents 1 to 3/Claimants

4.R.Johan Andrews

... 4th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award made in M.C.O.P.No.2583 of 2003 dated 03.07.2008 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Tiruchirappalli.

For Appellant : Mr.M.Ramaratnam

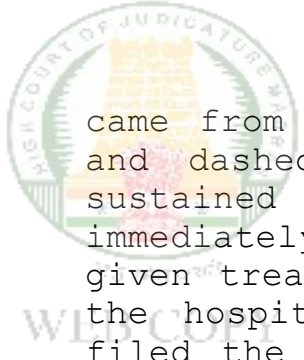
For R - 1 to 3 : Mr.C.Padmaraj

For R 4 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Appellant/New India Assurance Company against the Judgment and Decree made in M.C.O.P.No.2583 of 2003 dated 03.07.2008 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Tiruchirappalli.

2.The case of the first respondent/claimant is that on 14.07.2003 at about 1.00 hours, the deceased Muniyandi was pushing his bicycle on the left side of Tiruchy-Kulumani Road near Prabhu
<https://hcservices.courts.gov.in/hcservices/>
Gas station from west to east. At that time, a motorcycle bearing Registration No.TN-45-L-8920 belonging to the fourth respondent



came from the opposite direction in a rash and negligent manner and dashed against the deceased. The deceased fell down and sustained grievous injuries on head and left leg. He was immediately taken to the Government Hospital, Tiruchirappalli and given treatment. But, inspite of treatment, the deceased died in the hospital on 17.08.2003. Therefore, the respondents 1 to 3 filed the claim petition in M.C.O.P.No.2583 of 2003, claiming a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as compensation for the death of the husband of the first respondent and father of the respondents 2 & 3. By the award, dated 03.07.2008, the Tribunal awarded a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation.

3.The learned counsel for the appellant submitted that the complaint was given after 6 days from the date of accident and it was alleged in the complaint that the date of accident is on 14.07.2003 and the deceased was admitted in the hospital only on 20.07.2003 and on that day, the complaint was given, vehicle number was not mentioned in the complaint. He further submitted that the deceased died only due to the old age and severe diabetic and not due to the accident. Therefore, the fourth respondent is not responsible for the accident.

4.Before the Tribunal, on the side of the claimant, two witnesses viz., P.W.1-Vellaiyammal and P.W.2-Pichaimuthu were examined and three documents viz., Exs.A.1 to A.3 were marked and on the side of the respondents, one documents viz., Ex.B.1-Case sheet pertaining to Muniyandi was marked and R.W.1 and R.W.2 were marked.

5.Based on the evidence and the documents, the Tribunal has come to the conclusion that the accident has been occurred only due to the rash and negligent driving of the fourth respondent. As the appellant is the insurer of the fourth respondent, the Tribunal had directed the appellant to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation.

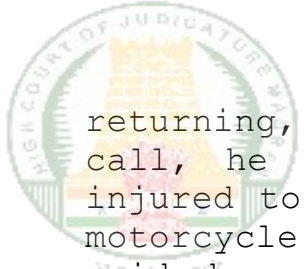
6.Aggrieved against the said award, the appellant/insurance company has filed the present Civil Miscellaneous Appeal, challenging only the quantum of compensation.

7.Therefore, the only issue to be decided in this appeal is whether the Tribunal has awarded excess compensation or awarded just compensation.

8.I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 4 and perused the materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

9.P.W.2 who is the eye witness had stated that the first respondent vehicle dashed against the deceased. While he was



returning, he stopped his vehicle (Auto) for attending natural call, he saw the accident. He helped the victim and took the injured to his home. The deceased was pushing his bicycle and the motorcycle came in a rash and negligent manner dashed against the said deceased. The owner and the driver of the offending vehicle did not appear and defended their case. In the absence of any contra evidence produced, evidence of P.W.2 is to be accepted. The R.W.2 Investigator Report was filed and he deposed that he examined the driver of the vehicle and the owner of the offending vehicle and that they had denied their involvement and had stated that the victim has fallen voluntarily and sustained injuries. No statement has been recorded from the owner. The respondent Insurance Company has not examined the driver or the owner before the Tribunal to substantiate their claim. Post Mortem report records that the deceased had died of shock and hemorrhage and injuries to the right lower limb. Based on the above evidence, it is proved that the act of the driver of the offending vehicle has caused the accident and the Insurance Company is liable to pay compensation.

10. From the materials available on record, it is seen that the respondents 1 to 3 claimed that the deceased was a plantain leaves seller and was earning Rs.3,000/- (Rupees Three Thousand only) per month as notional income. In view of three claimants, the Tribunal deducted 1/3rd for personal expenses and has applied the correct multiplier as "8" as per the judgment reported in **2009 (2) TN MAC 1 (SC) Sarla Verma v. Delhi Transport Corporation** and awarded a sum of Rs.1,92,000/- (Rupees One Lakh Ninety Two Thousand only) towards loss of income. The Tribunal awarded a sum of Rs.6,000/- (Rupees Six Thousand only) towards love and affection and a sum of Rs.3,000/- towards funeral expenses and the said amounts awarded to respondents 1 to 3 in different heads are not excessive.

11. In view of the above, this Court is of the view that there is no error in the finding of the Tribunal and the Tribunal has awarded just and reasonable compensation. Hence, there is no infirmity or irregularity in the award passed by the Tribunal. Therefore, this Civil Miscellaneous Appeal deserves to be dismissed.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the award made in M.C.O.P.No.2583 of 2003, dated 03.07.2008 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Tiruchirappalli, is hereby confirmed. The appellant/New India Assurance Company is directed to deposit the award amount, as directed by the Tribunal, with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the respondents/claimants are permitted to withdraw their respective shares as apportioned by the Tribunal



with accrued interests and costs, without filing any formal petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar

To

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

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Madurai Bench of Madras High Court,
Madurai. (2 Copies))

+ 1 cc TO Mr.D.Senthil , Advocate in SR No. 83984
+ 1 cc TO Mr.C.Padmaraj , Advocate in SR No. 83953

Mrn/Smi

AE/KK/SAR2/13.02.2018/4P/6C

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