

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1433 of 2001
and CMP No.2013 of 2007

1. K.Nagendran
2. K.Ravi
3. K.Raji
4. K.Kalai
5. K.Amutha

Appellants / Claimants

Vs

1. N.Balakrishnan
2. The United India Insurance Co.Ltd
Anna Salai
Chennai -2.

Respondents / Respondents 1 and 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 07.09.1999 passed in M.C.O.P.No.939 of 1996 on the file of the IV Small Cause Court / Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.Anand & Mr.Surya

For Respondent : Mr.S.Udayakumar for R2

R1 : No Appearance

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimants as against the award passed by the Tribunal in M.C.O.P.No..939 of 1996.

2. The brief facts of the case are that on 07.09.1995 at about 2.30 pm, when the deceased Kuppammal was travelling in the 1st respondent's lorry bearing Reg.No.TMN 2052 in G.S.T Road, near B.D.O's office, Maduranthakam, the driver, who was driving the said Lorry in a rash and negligent manner, dashed against one mini Lorry bearing Reg.No.TN 32 3263, which came in the opposite direction in the same Road. As a result of the collision, the deceased sustained fatal

injuries all over the body and irrespective of the treatment given to her, she died on 26.11.1995 at Government General Hospital, Chennai. The legal heirs of the deceased Kuppammal filed a claim petition before the Tribunal claiming a compensation of Rs.1,50,000/-. Against which, the Tribunal awarded a sum of Rs.1,07,000/- as compensation to the claimants under the following heads:-

S.No	Head	Compensation (in.Rs.)
1.	Towards Hospitalization expenses	80,000.00
2.	Towards funeral expenses	2,000.00
3.	Towards loss of love and affection	25,000.00
Total		1,07,000.00

3. Heard both sides.

4. The learned counsel for the appellants submitted that since the conditions laid down in Section 149 (2) (a) (i) (a) & (c) of the MV Act was violated, the second respondent is responsible and liable to pay the compensation to the appellants, as per the judgment reported in 1997 ACJ 1065 and 1985 ACJ 232.

5. This Court has considered the submissions made by the learned counsel for both sides and perused the materials available on record.

6. At the outset, it has to be pointed out that the very vital document, i.e., the Insurance policy, in original, has not been marked by the second respondent herein before the Tribunal. In the absence of original Insurance policy, an adverse inference has been drawn by the Tribunal, which in the opinion of this Court, cannot be assailed. Further, inspite of taking summons through Tribunal to examine the owner of the vehicle, i.e., the first respondent herein, to elicit about the truth whether he had knowledge of hiring the vehicle, the same could not be established. Thus, the findings on the aspect of negligence, by the Tribunal stand confirmed, as such.

7. As far as quantum is concerned, it is an admitted case of both sides that the accident had taken place on 07.09.1995 and the deceased died on 26.11.1995. The Tribunal based on the materials, evidence and documents produced has arrived at the just compensation to be payable, as stated supra, by elaborate reasonings taking into consideration the documents, more especially, Ex.R-2. The reasonings recorded by the Tribunal are based on probabilities and weight of

evidence, which in the opinion of this Court, are perfectly justified. Hence, the findings of the Tribunal are confirmed and the compensation amount(s) awarded by the Tribunal along with interests and costs are hereby confirmed.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The respondents herein shall deposit their share of compensation amounts, along with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimants proportionately forthwith, through RTGS. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Ad I)

//True Copy//

Sub Assistant Registrar

srk / vrn

To

1.The IV Judge, Court of Small Cause Court /
Motor Accident Claims Tribunal, Chennai

Copy to: The Section Officer
V.R.Section
Madras High Court
Chennai 104.

+1cc to M/s.Anand and Surya, Advocate SR.52071
+1cc to Mr.S.Udayakumar, Advocate SR.52665

सत्यमेव जयते C.M.A.No.1433 of 2001
and CMP No.2013 of 2007

PM(CO)
CB(13/02/2020)

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