



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 03.11.2020

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.No.1289 of 1998

The National Insurance Company Limited,
Thanjavur.

.. Appellant/4th Respondent

vs.

1.M.Sivasamy

..Petitioner/Respondent

2.Senthamaraiselvi

3.Vanitha

4.Minor Lalitha

5.Minor Saritha

6.Minor Saravanababu

7.Minor Anitha

8.Minor Kavitha ... 1 to 8 Respondents/Petitioners 1 to 8

9.K.Ramamoorthy Maniar ... 9th Respondent/1st Respondent

10.R.Shankar ... 10th Respondent/2nd Respondent

11.The United India Insurance Company,
represented by its Branch Manager,
Thanjavur. ...11th Respondents/3rd Respondent
(Minor Respondents 4 to 8 are represented by their father and the
first respondent herein M.Sivasamy)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and decree made in M.C.O.P.No.49 of 1996, dated 17.4.1998 on the file of the Motor Accident Claims Tribunal, Additional District Judge-cum-Chief Judicial Magistrate, Thanjavur.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.T.Susindran

1 to 8

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



For Respondent-10 : Mr.S.Anand Chandrasekar

For Respondents : No appearance
9 and 11

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J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.49 of 1996, dated 17.4.1998, the appellant/Insurance Company has filed this appeal.

2.Brief facts of the case are that on 19.02.1995, the deceased Vasantha, along with her brother Panchanathan were proceeding to Kabisthalam in a cycle to see cinema, at that time, a Tractor bearing Registration No.TN 25395 attached with Trailor bearing Registration No. TN 49 Z 0865, insured with the appellant herein, came in the east to west direction, driven by its driver in a hectic speed, rammed their cycle and in that accident, the said Vasantha died on the spot and her brother Panchanathan had sustained minor injuries. The first respondent herein is the husband of the deceased vasantha and the respondents 2 to 8 are the children of the said deceased Vasantha and first respondent.

3. The appellant resisted the claim by filing a counter disputing the manner of accident, age, avocation and income of the deceased and their liability to pay the compensation.

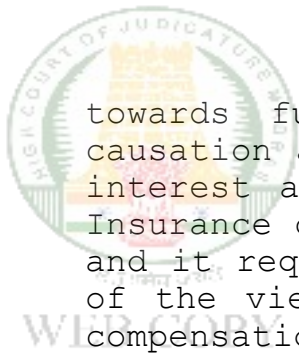
4.Before the Tribunal, on the side of the claimants/Respondents 1 to 8 herein, P.W.1 and P.W.2 were examined and three documents were marked as Ex.P1 to Ex.P3. On the side of the respondent/appellant, three witnesses were examined and Ex.R1 and Ex.R2 were marked.

5.The Tribunal, after considering the oral and documentary evidence held that the appellant and 10th respondent herein are jointly and severally responsible to pay the compensation to the claimants and awarded a compensation of Rs.1,29,400/- along with interest at 12% p.a. Challenging the award, the appellant has filed the present appeal.

6.Heard the learned counsel appearing on either side and perused the materials available on record.

7.This appeal has been filed challenging the quantum and the manner of accident is not disputed. Hence, it is not necessary to elaborate on other aspects.

8.A Perusal of the judgment of the Tribunal would show that the Tribunal after considering the evidence of R.W.2 and R.W.3, granted a sum of Rs.1,22,400/- towards loss of dependency, Rs.2,000/-



towards funeral expenses and another sum of Rs.5000/- towards causation and totally awarded a sum of Rs.1,29,400/- together with interest at 12% p.a. Though the learned counsel for the appellant Insurance company has contended that the award is on the higher side and it requires reduction, on perusing the materials, this Court is of the view that the Tribunal has awarded a just and reasonable compensation.

9.Though it is contended that the appellant cannot be mulcted with liability on account of violation of policy conditions, the learned counsel for the appellant seeks permission to proceed against the owner. If law permits, the appellant is entitled to initiate proceedings against the owner.

10.In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their share in the award amount, less the amount already withdrawn, if any, together with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal,
(Additional District Judge and Chief Judicial Magistrate's Court),
Thanjavur.



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

JUDGMENT MADE IN
C.M.A(MD) No.1289 of 1998
03.11.2020

kmv (CO)
TR(07.01.2021) 4P 4C