



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 04.12.2020

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.1057 of 2006

United India Insurance Company Ltd.,
Tirunelveli. .. Appellant/2nd Respondent

vs.

1.Mookkammal (died)
2.Paul Raj ... Respondents 1 & 2/Claimants
3.Mohammed Rahamath Khan ... Respondent No.3/Respondent No.1
4.Chelliah
5.Chitra devi
6.Pirainudal Selvi ... Respondents

[R4 to R6 are brought on record as LR's of deceased
R1 vide Court order dated 04.10.2017 made in
CMP(MD)No.7876 to 7878/2017]

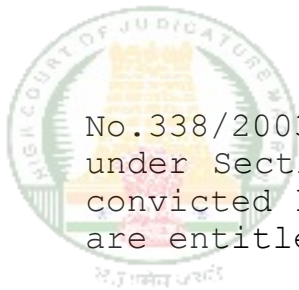
Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the fair and decretal order dated 24.04.2006 made in MCOP No.19 of 2004 on the file of the Motor Accident Claims Tribunal, Principal Sub-Court, Tenkasi.

For Appellant : Mr.A.S.Mathialagan
For Respondents : Mr.R.J.Karthick (for R2, R4 to R6)
No appearance for R3,
R1- Died

J U D G M E N T

This appeal is preferred by the Insurance Company questioning the award passed by the Motor Accident Claims Tribunal, Sub-Court, Tenkasi, in MCOP No.19 of 2004 dated 24.04.2006.

2.The claim petition was filed by the son and daughter of the deceased Murukal seeking compensation of Rs.5,00,000/-. It is the case of the claimants that on 09.05.2003 at 05.15 p.m, while the deceased Murukal was crossing Courtalam-Tenkasi main road, near Sinthamani Bridge, the first respondent came in a two wheeler bearing registration No.TN-76-1105 in high speed and hit her, in which, she sustained fracture in the left leg. Immediately, she was admitted in the Government Hospital, Tenkasi, however, she succumbed to injuries on 30.08.2003. In this regard, a criminal case in Crime



No.338/2003 was filed on the file of the Tenkasi Police Station under Sections 279, 337 and 338 IPC. The first respondent was also convicted before the Judicial Magistrate, Tenkasi and the claimants are entitled for compensation.

3.The appellant/Insurance Company resisted the claim petition contending that the claim was excess and the accident had not taken place as projected by the claimants.

4.During the trial, on behalf of the claimants, the second claimant has examined himself as P.W.1 and Exs.1 to 9 were also marked. On the side of the appellant/Insurance Company, no document was produced and no witness was examined. Upon consideration of evidence adduced by the parties, the Tribunal held that the first respondent was negligent at the time of accident and awarded compensation of Rs.4,50,000/- along with interest at the rate of 9% per annum.

5.Mr.A.S.Mathiyalagan, learned counsel for the appellant/Insurance Company would argue that the deceased is said to have been sustained injuries on 09.05.2003 and she was discharged from the hospital on 11.06.2003. It is the submission of the learned counsel for the appellant that admittedly, the deceased sustained only fracture in the left leg and she died on 30.08.2003 and there is no material to show that the deceased died due to the injuries sustained in the accident on 09.05.2003. It is further contended that the award of the Tribunal is exorbitant and excessive and it has to be reduced.

6.Per contra, Mr.R.J.Karthick, learned counsel for the respondents/ claimants while drawing attention of this Court to the counter affidavit filed by the appellant before the Tribunal, contended that the plea now being taken by the appellant that there was no nexus between the injuries and death, was not specifically taken by them before the Tribunal and no evidence was let in to support the said contention. According to the learned counsel, though the claimants were majors and they are entitled to seek compensation for the death of their mother.

7.Perusal of the materials would show that in order to prove the negligence aspect, the claimants have produced Ex.P.1-First Information Report, Ex.P.3-Motor Vehicle Inspector's Report, Ex.P.4-Observation Mahazer, Ex.P.5-Rough Sketch, Ex.P.6-Charge Sheet and Ex.P.7-Judgment of the Magistrate's Court. The document referred to above would show that the criminal case was registered against the rider of the motorcycle and he was also convicted by the criminal Court. No contra evidence was produced by the appellant to take a different view. Hence, the finding that the accident had occurred due to the negligence of the rider of the motorcycle is confirmed.



8.As rightly pointed out by the learned counsel for the respondents/claimants that the plea now taken by the appellant that there was no nexus between the injuries and the death was not specifically pleaded in the counter filed by the appellant before the Tribunal. Hence, the appellant is not entitled to raise this plea in the appeal and the contention of the learned counsel for the appellant in this aspect is rejected.

9.While quantifying the award amount, the Tribunal has fixed the age of the deceased as 65 on the basis of the death certificate (Ex.P.9). It is the case of the claimants that the deceased was working in a Beedi company and thereby, earning Rs.3,000/- per month. The Tribunal, while fixing the notional income at Rs.3,000/-, deducted Rs.1,000/- for her personal expenses and held that the contribution to the family is Rs.24,000/- per annum. On the basis of the age of the deceased, the Tribunal applied multiplier '5' and quantified the amount Rs.1,20,000/- (24000 x 5) for loss of income. Further, the Tribunal awarded Rs.2,000/- for transportation expenses; Rs.15,000/- for extra nourishment; Rs.500/- for loss of article; Rs.50,000/- for medical expenses; Rs.1,00,000/- for loss of love and affection; Rs.5,000/- for funeral expenses; Rs.1,00,000/- for pain and suffering; Rs.50,000/- for mental agony and Rs.7,500/- for loss of happiness. In total, the Tribunal has awarded Rs.4,50,000/-.

10.It is seen from the materials available on records, I find force in the contention of the learned counsel for the appellant that the Tribunal has awarded excessive amount. Hence, it would be appropriate to reduce the same. Admittedly, the deceased had taken treatment at Government Hospital and no evidence was adduced by the claimants for medical expenses and hence, the amount of Rs.50,000/- awarded towards medical expenses is set aside. Likewise, without any material, the Tribunal has awarded Rs.7,500/- towards loss of happiness and Rs.50,000/- towards mental agony and Rs.1,00,000/- towards pain and suffering and hence, the award under the above heads are set aside. The amount awarded under other heads are unaltered. It is seen that the Tribunal has not awarded any amount for attendant charges. Since the deceased died after three months from the accident, hence, this Court awards Rs.10,000/- towards attendant charges. Accordingly, the award amount is reduced to Rs.2,52,500/- from Rs.4,50,000/-.

11. It is represented by the learned counsel for the appellant/Insurance Company that as per the order of this Court, the appellant/Insurance Company deposited the entire award amount and the claimants have withdrawn Rs.1,50,000/-. In view of the above modification in the award amount, the claimants are permitted to withdraw the balance amount as per ratio fixed by the Tribunal and the excess amount shall be refunded to the appellant/Insurance



Company.

12. For the foregoing reasons, the civil miscellaneous appeal is partly allowed and the Judgment and Award, dated 24.04.2006, passed in M.C.O.P.No.19 of 2004, by the Motor Accident Claims Tribunal / Principal Sub Court, Tenkasi, are modified to the extent as indicated above. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Motor Accident Claims Tribunal,
Principal Sub-Court, Tenkasi.

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

+1 CC to Mr.A.S.Mathialagan, Advocate SR.No. 24173

JUDGMENT MADE IN
C.M.A(MD)No.1057 of 2006
04.12.2020

ES(CO)

TR(21.05.2021) 4P 5C