BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 14.12.2020
CORAM
**THE HONOURABLE MR.JUSTICE G.ILANGOVAN**
C.M.A(MD) No.1522 of 2010
and
M.P.(MD)No.2 of 2010
and
C.M.P.(MD)Nos.7686 and 11204 of 2017

Divisional Manager,
The Oriental Insurance Company limited,
6-A, Lawson's Road,
Ganesh Complex,
Cantonment,
Trichirappalli-1. .. Appellant/2nd Respondent in M.C.O.P

vs.

1.Manickam
2.Chandra .. Respondents 1 & 2/Petitioners 1 &2 in M.C.O.P

3.V.S.Natarajan .. 3rd Respondent /1st Respondent in M.C.O.P

[2nd respondent remained exparte before the lower court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award made in M.C.O.P.No.1229 of 2003, dated 28.02.2007, on the file of the Motor Accident Claims Tribunal cum Sub Court, Tiruchirappalli.

For Appellant : Mr.K.Bhaskaran
For Respondents : No Appearance

**JUDGMENT**

Challenging the award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.1229 of 2003, dated 28.02.2007, the appellant/Insurance Company has filed this appeal.

2.The respondents 1 and 2/ claimants filed a claim petition before the Motor Accident Claims Tribunal cum Sub Court, Tiruchirappalli, claiming compensation amount of Rs.2,71,000/- for the death of one Chinnathal.

3.The first respondent/1st petitioner is the son and the second respondent/2nd petitioner is the widowed daughter of the deceased and the deceased was doing vegetable vending business on 14.10.2002 at about 06.10 p.m., near Subramaniyapuram Bus Stop, Pudhukottai Road. At that time, the third respondent/1st respondent vehicle bearing Registration No.TAK 887 was driven by its driver in a rash and negligent manner and dashed against the deceased, as a result of which, she sustained injuries and was taken to Hospital and she died on 15.10.2002, because of the accidental injuries. The vehicle was insured with the appellant/Insurance Company. A total amount of Rs.4,00,000/- (Rupees Four Lakhs Only) was claimed as compensation. The third respondent/1st respondent remained ex-parte before the Tribunal and the case of the appellant/Insurance company is that the occurrence has taken place due to rash and negligent manner on the part of the third respondent/1st respondent vehicle driver. The claim made by the respondents 1 and 2/petitioners is excessive.

4.Before the Tribunal, on the side of the claimants, two witnesses were examined and four documents are marked. On the side of the respondents, no witnesses were examined and no documents marked.

5.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the driver of the third respondent/first respondent and they were liable to pay compensation and also fixed the compensation amount of Rs.2,71,000/- (Rupees Two Lakhs and Seventy One Thousand only) with interest at the rate of 7.5% per annum and costs. But, the Tribunal dismissed the claim petition against the third respondent/first respondent.

6.Challenging the same, the appellant/Insurance Company filed the present appeal.

7. The evidence on record as well as the finding of the Tribunal, have to be analysed. EX.P.1 is the copy of the first information report registered by which, the case was registered against third respondent/1st respondent driver. It has been stated that when the deceased was doing vegetable vending business near Subramaniyapuram bus stop at about 06.10 p.m., on 14.10.2020, the driver of the vehicle bearing Registration No.TAK-887 drove the same in a rash and negligent manner and dashed against the deceased. The daughter-in-law of the deceased, namely, Jayanthi, lodged the complaint. On a reading of the First Information Report, it is seen that the third respondent/first respondent vehicle driver, drove the vehicle in a rash and negligent manner and dashed against the deceased, who was doing vegetable vending business on the road side. The manner of the accident clearly indicate that it was the driver of the third respondent/first respondent who was at fault. There is no evidence on the side of the respondents. So, the finding of the Tribunal that the accident took place only due to the rash and negligent driving on the third respondent/first respondent driver, requires no interference.

8.In the light of the above submission made by the learned counsel for the appellant, regarding the quantum, the Tribunal has assessed that the deceased has earned Rs.100/- per day based upon which the monthly income was fixed as Rs.3000/- and after deducting the personal expenditure, reached a sum of Rs.2,000/- per month. Thus, upon the age mentioned in the post mortem Report, the age was fixed as 55. The age mentioned in the post postmortem report can be taken into account. The multiplier was fixed at 11. So, the total loss of income was fixed at Rs.2,64,000/- and customary loss of love and affection fixed at Rs.5,000/- and funeral expenses fixed at Rs.2,000/- were added, the total compensation was fixed Rs.2,71,000/- (Rupees Two Lakhs Seventy One Thousand only) with interest at the rate of 7.5% per annum and costs.

9.Considering the nature of avocation of the deceased, the compensation fixed by the Tribunal is just fair and reasonable, which requires no interference. But a small mistake has been committed by the Tribunal in dismissing the claim petition against the third respondent/1st respondent, which is not legal. The 3rd respondent/1st respondent is the owner of the vehicle. The appellant/second respondent Insurance Company, is liable to indemnify the 3rd respondent/first respondent, in case of damages to third parties. So, the award can be modified to the effect that the third respondent/first respondent and the appellant/second respondent are jointly and severally liable to pay the compensation amount to the respondents 1 and 2/petitioners 1 and 2.

10.Accordingly, the Civil Miscellaneous Appeal is dismissed. The compensation awarded by the Tribunal is confirmed and however, the decree is modified to the effect that both the third respondent/first respondent and the appellant/Insurance Company are jointly and severally liable to pay the compensation amount to the respondents 1 and 2/claimants. The appellant/Insurance Company is directed to deposit the amount on behalf of the third respondent. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sji

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli.



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

+1cc to Mr.K.Bhaskaran, Advocate, SR.No.25606.

**JUDGMENT MADE IN**
**C.M.A(MD) No.1522 of 2010**
**14.12.2020**

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