



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 14.12.2020

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.311 of 2009

New India Assurance Co., Ltd.,
66, W.B.Road,
Trichy-8.

.. Appellant/Respondent No.2

vs.

1.Dhanalaskhmi
2.Nirmala

.. Respondents Nos.1 & 2/
Petitioners Nos.1 & 2

3.T.Kannan

..Respondent No.3/Respondent No.1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 02.01.2007 made in M.C.O.P.No.3059 of 2002 on the file of the Motor Accident Claims Tribunal, III Additional Sub Court, Trichirappalli.

For Appellant :Mr.J.S.Murali

For R1 & R2 :Mr.B.Prasanna Vinoth

J U D G M E N T

Aggrieved over the award passed by the Motor Accident Claims Tribunal, III Additional Sub Court, Trichirappalli in M.C.O.P.No.3059 of 2002, dated 02.01.2007, the present appeal has been filed by the appellant/Insurance Company.

2. The claimants are mother and sister of the deceased Selvakumar. According to them, on 13.09.2002 at 11.20 p.m., the deceased Selvakumar was proceeding in a Hero Honda Motorcycle on Trichy-Madurai Highways. When he was nearing Panchapur, the Maruti Omni Van owned by the first respondent bearing Registration No.TN-67-Z-2025 was driven by its driver in a high speed and hit against the motorcycle. In the accident, the deceased was thrown away and died on the spot. The claimants would further state that the deceased was working as a Wireman in the Tamil Nadu Electricity Board and his monthly earning was Rs.7,000/- and they claimed compensation of Rs.16,00,000/-.



3. The appellant/Insurance Company opposed the claim petition disputing the manner of the accident, age, income of the deceased. It is contended that the claim was excessive and exorbitant.

4. To prove the case of the claimants, with regard to negligence P.W.2, who witnessed the accident, was examined and in his evidence he has stated that the accident had occurred due to the negligence of the driver of the Omni Van. Though the accident had taken place at 11.20 p.m., it appears that the complaint was given on the next day at 7.30 a.m., P.W.2 has stated that when he approached the police immediately after the occurrence, he was directed to come next day. Hence, the complaint was lodged on the next day of the accident.

5.R.W.1-Joseph, who was examined on behalf of the appellant/Insurance Company, stated that the vehicle was inducted wrongly by the claimants to make a false claim against the Insurance Company. A report was also filed to that effect. The Tribunal discarded the evidence of R.W.1 and Ex.R1 on the ground that the private investigation commenced only after two years. Ex.P3 reveals that the driver of the Omni Van pleaded guilty and paid the fine amount before the Criminal Court. Based on the evidence of P.W.2 and Ex.P2, in my view that the Tribunal has rightly held that the driver of the Omni Van was responsible for the accident.

6. Insofar as the quantum of compensation is concerned, P.W.3 Bailee Madhyas, who was working as Administrative Officer in the Tamil Nadu Electricity Board at Kirapatti, would say that the deceased was working as Wireman in the Electricity Board and his monthly income was Rs.6084/-. Ex.P4 is the salary certificate. The Tribunal held that the deceased was 28 years old at the time of accident and he was a bachelor, however deducted 1/3rd from the income for his personal living expenses. Since the mother of the deceased age was 45 years, '13' multiplier was applied and arrived at Rs.6,32,840/- as loss of income. In addition, Rs.10,000/- awarded for loss of love and affection, Rs.5,000/- awarded for transportation and Rs.5,000/- awarded for funeral expenses. In total, Rs.6,52,840/- was awarded as compensation along with interest at the rate of 7.5% p.a.,

7. In this appeal if 50% deduction is made for personal and living expenses of the deceased and 50% added to the income for future prospects, the award would be higher than the amount awarded by the Tribunal. Taking note of this aspect, I am of the opinion that, there is no illegality or irregularity in the award of the Tribunal. Therefore, the amount awarded by the Tribunal is reasonable and it is confirmed.

8. 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

<https://hcmis.courts.gov.in/hcmis/> 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 being made, the respondents 1 & 2/Claimants are permitted to withdraw the award amount as per the ratio of apportionment made by the Tribunal, by making necessary application before the Tribunal. No costs.

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Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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,
III Additional Sub Court,
Trichirappalli.

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

+1 CC to M/s.B/PRASANNA VINOTH, Advocate (SR-25468[F] dated 15/12/2020)

+1 CC to M/s.J.S.MURALI, Advocate (SR-25629[F] dated 15/12/2020)

JUDGMENT MADE IN

C.M.A(MD) No.311 of 2009

14.12.2020

KMV (CO)

NR (31/12/2020) 3P : 6C

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