



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 11.12.2020

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A(MD) No.1693 of 2010

and

MP (MD) No.3 of 2010

The Oriental Insurance Co.Ltd.,
Ramaiah Arcade,
II Floor, 669, Mount Road,
Cheennai-6.

.. Appellant/2nd Respondent

vs.

1.Muthukannu

2.Periyammal

3.Jayalakshmi

4.Minor Pappathy

5.Minor Rahendran

6.Minor Raman

Minors 4th to 6th Respondents Rep by their mother and natural guardian the 2nd Respondent Periyammal)

7.Pappu @ Pappammal

8.Minor Amsu

9.Minor Chinnathambi

10.Minor Kanagambal @ Kalimani

Minors 8th to 10th Respondents Rep by their mother and natural guardian the 7th Respondent Pappu @ Pappammal)

... Respondents 1 to 10 / Petitioners 1 to 10



11.Raja Mahendran

... 11th Respondent / 1st Petitioner

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.1911/2002, dated 08.07.2008, on the file of the Motor Accidents Claims Tribunal cum I Additional District Judge, Tiruchirappalli.

For Appellant : Mr.K.Bhaskaran

For R1,R2,R4, to R10: No Appearance

For R3 : Dismissed vide order dated 10.04.2019

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the second respondent / Insurance Company against the order/award passed by the Motor Accidents Claims Tribunal cum I Additional District Judge, Tiruchirappalli in M.C.O.P.No.1911/2002, dated 08.07.2008.

2. The respondents 1 to 10 herein has filed a claim petition in M.C.O.P.No.1911/2002 on the file of the Motor Accidents Claims Tribunal cum Additional District Judge, Tiruchirappalli, under Sections 140 and 166 of the Motor Vehicles Act, claiming a sum of Rs.8,00,000/- as compensation for the death of one Sellakkutty in a road traffic accident. The learned Tribunal, by the order/award dated 08.07.2008, has allowed the petition against the 2nd respondent/Insurance Company and directed the 2nd respondent/Insurance Company to pay a sum Rs.6,20,000/- as compensation on behalf of the 1st respondent with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit and also directed the 2nd respondent/Insurance Company to pay costs. Feeling aggrieved, the 2nd respondent/Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The case of the claimant before the Tribunal:-

(i)The deceased Sellakkutty and his friends were standing on the Tiruchirappalli - Dindigul Main Road at Chathrapatty near drainage bridge. At that time, the vehicle bearing Registration No.TN-49-H-3825 owned by the first respondent was driven by the drive in a rash and negligent manner from West to East direction and suddenly turned the vehicle to northern side of the road and hit the deceased. As a result, the Sellakkutty sustained grievous injuries and died on the spot itself. In respect of occurrence, the case in Crime No.168 of 2002 was registered against the driver of the first respondent.



(ii) With regard to the aforesaid accident, a complaint was lodged before the Ramji Nagar Police Station, Trichy, and based on the same, First Information Report has been registered in Crime No.168/2002 under Section 304 (A) IPC against the driver of the 1st Respondent and after completion of investigation, a charge sheet has been filed and the case is pending before the Jurisdiction Magistrate No.I, Trichy.

(iii) At the time of accident, the deceased Sellakkutty was hale and healthy and he was aged about 45 years and he was a paddy merchant and agriculturalist and getting a sum of Rs.10,000/- per month by doing cultivation and he spent the entire income to his family. The petitioner is the first wife, the second petitioner is the second wife, the petitioners 3 to 6 are children, the seventh petitioner is the third wife and the petitioners 8 to 10 are the children through third wife of the deceased Sellakkutty. Since he suddenly died due to the accident, his family members suffered a lot and hence, they claimed Rs.8,00,000/- as compensation.

(iv) At the time of accident, the first respondent's vehicle was duly insured with the 2nd respondent and hence, the respondents 1 and 2 are jointly and severally liable to pay compensation.

4. The 1st respondent remained *ex-parte* before the Tribunal. The 2nd respondent/Insurance Company alone contested the said claim petition by filing counter statement.

5. The case of the second respondent before the Tribunal is that the accident did not happen due to rash and negligent driving on the part of the first respondent's vehicle driver. Whereas, it took place when the deceased suddenly crossed the road and invited the accident. Other details with regard to age and income were denied. Further, the compensation claimed by the claimant is very excessive.

6. During enquiry before the Tribunal, on the side of the petitioners / claimants, three witnesses were examined and three documents marked. On the side of the respondents no witnesses was examined and no documents marked.

7. The learned Tribunal, after considering the materials placed before it, found that the accident had occurred only due to the rash and negligent driving of the first respondent's driver and assessed the compensation as Rs.6,20,000/- (Rupees Six Lakhs and Twenty Seven Thousand only). The learned Tribunal has also directed the 2nd respondent/Insurance Company to pay interest for the aforesaid amount at the rate of 7.5% per annum from the date of filing of petition till the date of deposit and also directed the 2nd respondent/Insurance Company to pay the costs to the petitioners.



8. Feeling aggrieved, the 2nd respondent/Insurance Company has filed the present Civil Miscellaneous Appeal.

9. Point for consideration:-

1) *Whether the compensation awarded by the Tribunal is just and fair?*

WEB COPY

10. Point No.1 :-

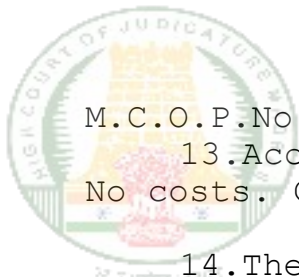
(i) For the purpose of deciding the negligence of the first respondent vehicle's driver, the Tribunal has taken into account the averments made in the First Information Report / Ex.P.1 and the Judgment copy / Ex.P.3 and came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle. A reading of the First Information Report and as well as the plea of guilt made by the driver of the first respondent shows that only the first respondent's vehicle driver was negligent in driving. Because, the driver of the Ambulance Van drove his vehicle without following the traffic rules and regulations and dashed against the person, who was standing on the mud side portion of the road. The appellant made a plea that only the deceased suddenly crossed the road and invited the accident without adducing any evidence. So, the manner of the accident clearly establish the negligence of the first respondent's vehicle driver. So, on the above, nothing to differ from the view of the Tribunal. So, the first point is concerned, it is confirmed that the accident only due to the rash and negligent driving on the part of the first respondent's vehicle driver.

(ii) The Tribunal after assessing the avocation of the deceased, came to the conclusion that he was earning a sum of Rs.8,000/- per month and after deducting a sum of Rs.2,000/- towards his personal expenses, calculated the monthly loss of Estate as Rs.6,000/-. The age of the deceased was fixed as 47 on the basis of the postmortem entry and there is no contra evidence to show the age of the deceased at the time of accident and hence, the Tribunal has taken Multiplier of 15. After applying the multiplier, calculated the total loss of Estate as Rs.6,20,000/-. The apportionate compensation was equally allotted to the petitioners / claimants.

(iii) In my opinion that the Tribunal has taken into account of the avocation of the deceased, fixed the monthly income as Rs.8,000/- is not excessive. The multiplier applied by the Tribunal is also proper.

11. On perusal of materials available on record, there is no counter objection on the side of the claimants. Hence, this Court find that the compensation awarded by the Tribunal requires to be confirmed.

12. In view of the same, the award passed by the Motor Accidents Services Court, Tiruchirappalli cum Additional District Judge, Tiruchirappalli, in



M.C.O.P.No.1911/2002, dated 08.07.2008, is confirmed.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14. The second respondent / appellant is directed to deposit the balance amount if any within a period of two months from the date of receipt of a copy of this order and on such deposit being made, the Tribunal may disburse the amount as per its direction in the award.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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 I Additional District Judge,
Motor Accidents Claims Tribunal,
Tiruchirappalli.

Copy to:

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

+1cc Mr.K.Bhaskaran, Advocate Sr.No.25604

JUDGMENT MADE IN
C.M.A(MD) No.1693 of 2010
and
MP (MD) No.3 of 2010

11.12.2020

NS (CO)

NR (19/01/2021) 5P : 5C

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