



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.730 of 2009

M/s.United India Insurance Co., Ltd.,
rep.through the Branch Manager
Mailaduthurai 123A, No.2 Road
Thanjavur District

... Appellant/2nd Respondent

-vs-

1.R.Kalaimathi

2.Akilandeeswari

[R2 declared as major vide court order dated 18.12.2020
made in CMA(MD)No.730/09 by MKKSJ]

3.Athi.Sundar Rajan

4.S.Chandra

5.M.Mathivanan

... Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, in M.C.O.P.No.247 of 2006, dated 19.01.2009, on the file of the Motor Accident Claims Tribunal / III Additional Sub Judge, Trichy, Trichy District.

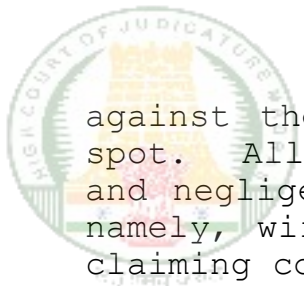
For Appellant : Mr.S.Muthalraj

For Respondents : R1, R2 & R4 - (Dismissed vide order of
this Court dated 13.02.2012
R3 & R5 - No appearance

J U D G M E N T

This civil miscellaneous appeal is directed against the Judgment and Award, dated 19.01.2009, passed in M.C.O.P.No.247 of 2006, by the Motor Accident Claims Tribunal / III Additional Sub Court, Trichy.

2. The respondents 1 to 4 / claimants are legal heirs of the deceased Raja. According to the claimants, on 25.12.2003, at about 11.30 a.m., while the deceased was going in the extreme left side of Ananthangi - Pudukottai Road, a Lorry bearing registration No.TN45 Z2223 owned by the fifth respondent and insured with the appellant - Insurance Company, which came in a rash and negligent manner, dashed



against the deceased. In the accident, the deceased died on the spot. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the Lorry, the legal heirs, namely, wife, daughter, father and mother, filed a claim petition, claiming compensation of Rs.20,00,000/-.

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3. Resisting the claim, the appellant - Insurance Company filed their counter affidavit disputing the manner of accident, age, avocation and income of the deceased and their liability to pay the compensation.

4. In order to substantiate the case, on the side of the claimants P.Ws.1 to 3 were examined and Exs.P1 to P13 were marked and on the side of the Insurance Company, no witness was examined and no document was marked. The Tribunal, after analyzing the evidence adduced by the parties, found that the driver of the Lorry was responsible for the accident and awarded a compensation of Rs.8,28,000/- along with interest at the rate of 7.5% per annum. Challenging the same, the present appeal has been filed.

5. Heard Mr.S.Muthalraj, learned counsel appearing for the appellant - Insurance Company and carefully perused the materials available on record.

6. In this case, one Ramesh (P.W.2) was examined as eyewitness to the accident. According to him, on 25.12.2003 at 11.30 a.m., while he was standing opposite to deceased's Hotel, the deceased came from south to north direction on the extreme left side of the mud road. At that time, the Lorry came in a rash and negligent manner and hit against the deceased. Ex.P1 - Copy of First Information Report and Ex.P3 - Copy of Judgment passed by the Criminal Court were marked. Exs.P1 and P3 show that the driver of the Lorry was prosecuted and also paid the fine amount for his negligent driving. The appellant - Insurance Company did not place any material before the Tribunal to disprove the above evidence. After analyzing the above evidence, the Tribunal found that the driver of the Lorry was responsible for the accident. I find no illegality in the findings of the Tribunal on the negligence aspect.

7. Insofar as quantum is concerned, the deceased was running two Hotels and earning Rs.6,000/- per month. After deducting 1/3rd towards his personal expenses, the Tribunal fixed his annual income at Rs.48,000/- (Rs.4,000/- X 12) and applying multiplier "16", the Tribunal awarded Rs.7,68,000/- (Rs.48,000/- X 16) towards loss of income. In addition, the Tribunal awarded Rs.5,000/- towards funeral expenses; Rs.30,000/- towards loss of love and affection; Rs.25,000/- towards loss of consortium. In total, the Tribunal awarded Rs.8,28,000/- along with interest at the rate of 7.5% per annum as compensation, which in my considered opinion, is fair and reasonable and it does not warrant any interference of this Court.



8. The claim petition is of the year 2006 and at that relevant point of time, the second respondent was a minor and by now, she should have become major. So, the second respondent is declared as major and the Tribunal is hereby directed to disburse her share.

9. In that view, the civil miscellaneous appeal is dismissed, as devoid of merits. It is represented that the appellant - Insurance Company has already deposited the entire award amount together with interest and costs to the credit of the claim petition. The respondents 1 to 4 / claimants are permitted to withdraw their respective shares in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

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To:

- 1.The III Additional Sub Judge,
Motor Accident Claims Tribunal,
Trichy District
- 2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A. (MD) No.730 of 2009

18.12.2020

VB (04.03.2021) 3P 4C