



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A (MD)No.516 of 2009

and

M.P. (MD)No.3 of 2009

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M/s.United India Insurance Company Limited,
Rep. by its Divisional Manager,
1783/84, South Street,
Thanjavur.

... Appellant/2nd Respondent

Vs.

1.K.Vanniammal

2.S.Jeyalakshmi

3.Minor S.Dinesh

4.Minor S.Ramesh

... Respondents 1 to 4/Petitioners

(Minors are rep. through their mother and
next friend 2nd respondent

5.Visalakshi

... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Order and Decree made in M.C.O.P. No.17 of 2006, dated 04.03.2008, on the file of the Motor Accident Claims Tribunal/Additional District and Sessions Court cum E.C.Court, Thanjavur.

For Appellant	: Mr.S.Muthalraj
For Respondents	: No Appearance

JUDGMENT

The appellant/Insurance Company has preferred this appeal questioning the award passed by the Motor Accident Claims Tribunal (Additional District and Sessions Court/EC Court), Thanjavur, in M.C.O.P.No.17 of 2006, dated 04.03.2008, wherein, the Tribunal has awarded a sum of Rs.1,93,000/- against the claim of Rs.10,00,000/- (Ten lakhs).

2. The claimants are the mother, wife and children of the deceased Selvam, respectively. It is the case of the claimants that the deceased Selvam, was working in Thanjavur Municipality as a Scavenger and he was paid Rs.3500/- per month. When he was travelling in a Tractor bearing Registration No.TN 49 D 9095, the driver drove the vehicle in a rash and negligent manner and hence, he fell down and he was run over and died on the spot.

3.The claim was resisted by the appellant insurance company contending that the deceased attempted to get him from the running



tractor and hence, he invited his death, for which, the appellant insurance company is not made liable to pay any compensation. It is also stated that the vehicle was driven by a person who was not holding valid driving license and it was the violation of the policy condition.

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4.The parties have adduced oral and documentary evidence before the Tribunal. On appreciation of the evidence adduced by the parties, it was held that the accident had occurred only due to the negligence on the part of the driver of the Tractor. Since the vehicle was insured with the appellant, both the owner as well as the insurer are liable to pay the compensation. Assailing the award, the present appeal has been filed.

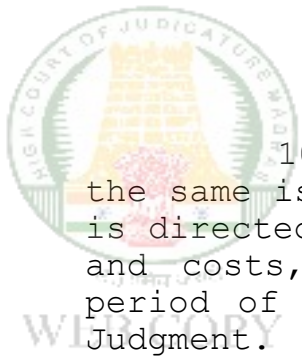
5.Heard, Mr.S.Muthal Raj, learned counsel for the appellant. Though notice was served on the respondents and their names also printed in the cause-list, none appears for them.

6.From perusal of the records, it is seen that the deceased was an employee in Thanjavur Municipality. Though it is contended that he was paid a sum of Rs.3,500/- p.m. admittedly, the salary certificate was not produced. Ex.P.6 would show that on the date of accident, the fifth respondent herein, who is the owner of the vehicle had taken the insurance policy and paid a sum of Rs.915/- towards premium and the vehicle had coverage on the date of accident.

7. The Tribunal taking the income of the deceased as Rs.1,000/-, awarded a sum of Rs.1,85,000/- towards loss of income. Ex.P.2 shows that the deceased died at the age of 37 years and as per the decision of the Hon'ble Apex Court in the case of **Smt. Sarla Verma & Others. Vs. Delhi Transport Corporation & Another**, the correct multiplier is '15'. It is to be noted that no amount has been awarded for future prospectus. The Tribunal without any calculation, has awarded a sum of Rs.1,85,000/- for loss of income. In addition, Rs.5,000/- was awarded for loss of consortium and Rs.1,000/- for transportation and Rs.2,000/- for funeral expenses. In total, the Tribunal has awarded a sum of Rs.1,93,000/- with interest at the rate of 7.5% per annum.

8.It is further evident from the records that the wife lost her husband at the age of 32 and minor children were aged about 9 and 7 on the date of accident. In the light of the above facts, the award of the Tribunal is cannot said to be excessive or exorbitant.

9.Though it is contended by the learned counsel for the appellant that policy conditions have been violated, it has not been proved neither before the Tribunal nor before this Court. I find no reason to over-turn the decision of the Tribunal. The award of the Tribunal is confirmed and thus the appeal fails.



10. In the result, the Civil Miscellaneous Appeal fails and the same is dismissed. Since the appeal is dismissed, the appellant is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants 1 and 2 are permitted to withdraw their share in the award amount, less the amount already withdrawn, if any, together with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal. The claimants 3 and 4, who are minors, by this time, would have attained majority and they are permitted to withdraw their share in the award amount by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

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 Additional District & Sessions Judge/
Special Judge for EC Act cases,
(Motor Accident Claims Tribunal),
Thanjavur.
2. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

JUDGMENT MADE IN
C.M.A(MD)No.516 of 2009
19.01.2021

VB (10.02.2021) 3P 4C