



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 14.12.2020

DATE ON WHICH PRONOUNCED : 11 .01.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A. (MD) .No.309 of 2011

in

MP(MD)No. 1 of 2011

The Oriental Insurance Company Ltd.,
68, Vallal Panchayappan Street,
Kancheepuram.

:Appellant /2nd Respondent

Vs.

1.Sampoornam

2.T.Gopal @ Gopalakrishnan

3.T.Sumathi

4.Geetha : Respondents 1 to 4/Petitioners 1 to 4

5.V.Shanmugam : 5th Respondent/1st Respondent

(5th 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.592 of 2006, dated 31.08.2010, on the file of the Motor Accident Claims Tribunal cum District Judge, Karur.

For Appellant : Mr.K.Bhaskaran

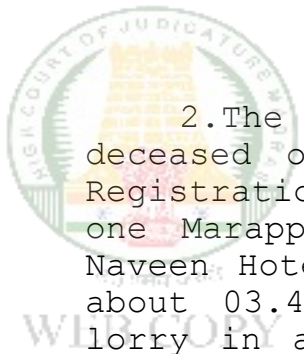
For R1, R2 & R4 : Mr.V.Balaji

For R3 : No Appearance

For R5 : Dismissed vide Court order dated 29.11.2017

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.592 of 2006, dated 31.08.2010, on the file of the Motor Accident Claims Tribunal cum District Judge, Karur.



2.The case of the claimants before the Tribunal is that the deceased one Thangavel was riding his TVS-50 Motorcycle bearing Registration No.TN-45-X-0754 from West to East direction along with one Marappa Gounder as a pillion rider. When they were nearing Naveen Hotel, Thennilai at Karur to Kovai Road, on 07.07.2004, at about 03.45 p.m., the first respondent's lorry driver drove the lorry in a rash and negligent manner and dashed against the two wheeler. As a result of which, both fell down and sustained injuries. Thangavel died on the spot, who was aged about 45 years, at the time of the accident and was earning a sum of Rs.6,000/- as a lorry driver. Claiming compensation amount of Rs.5,00,000/-, the claimants approached the Tribunal.

3.The case of the appellant/2nd respondent before the Tribunal is that it is the duty of the claimants to prove that the first respondent's vehicle was involved in the accident and the driver was owning proper driving license and insurance coverage with the 2nd respondent.

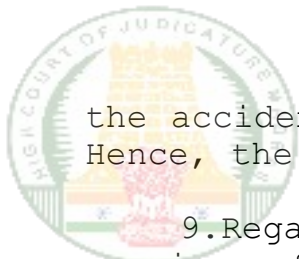
4.Before the Tribunal, on the side of the petitioners, two witnesses were examined and six documents marked. On the side of the respondent, one witness was examined and one document marked.

5.At the conclusion of 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 first respondent's vehicle driver.

6.Regarding to the compensation, it is found that the age of the deceased was 44 by applying multiplier 14, assessed the Loss of Income as Rs.5,04,000/- by taking into account, the monthly salary income of Rs.4,500/-. With this, the customary amounts were added and the Tribunal awarded the total compensation of Rs.5,44,000/- with 7.5% interest and cost. Challenging the quantum as well as the liability, the appellant is before this Court.

7.At the time of the hearing, the learned counsel for the appellant would submit that CMA(MD)No.507 of 2011 is the connected appeal and the same was disposed of by this Court on 24.01.2013 and the copy of the order is also placed before this Court for perusal. It was observed that the evidence shows that the accident took place only due to the rash and negligent driving on the part of the first respondent vehicle driver namely Senthil, the said Senthil was acquitted by the Criminal Court. The judgment of the Criminal Court was also produced before this Court.

8.Considering the nature and manner of the occurrence, the findings of the Tribunal was also confirmed to the effect that only the first respondent's vehicle driver was responsible for the accident. There is a finding by this Court on the manner of



the accident, this Court find no points to differ from the finding. Hence, the findings of the Tribunal is confirmed.

9.Regarding the quantum, the Tribunal has assessed the monthly earning of the deceased as Rs.4,500/-. After deducting 1/3 of income, fixed the same as Rs.3,000/- per month. For that purpose, the Tribunal took into account the driving license owned by the deceased, he was licensed to drive heavy vehicles and also had badge to drive public carriers. Therefore, the findings of the Tribunal on these aspects have been made on evidence which cannot be interfered without proper reason. No reasonable grounds were also made out in the appeal.

10.Regarding the age, the date of birth was noticed as 10.12.1960 as per the entry in the driving license that was accepted to be correct and also on the date of the accident, the age was fixed as 44. The proper multiplier as per the **Sarala verma (Smt) and others Vs Delhi Transport Corporation and another, (2009) 6 SCC 121**, multiplier 14 was taken into account. So, for the Loss of Income, it comes to Rs.5.04 lakhs. This is added with the customary amount of Funeral Expenses, Love and Affection and total amount was arrived at Rs.5,04,000/-. Therefore, This Court find that the award passed by the Tribunal is just, fair and reasonable and no interference is called for at the hands of this Court.

11. In the result, the award passed by the Motor Accident Claims Tribunal cum District Judge, Karur in M.C.O.P.No.592 of 2006, dated 31.08.2010, is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12. The appellant / Insurance Company Ltd., is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs within a period of two months from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the respondents 1 to 4 herein / claimants are permitted to withdraw the entire amount after deducting amount, if any, already received by them. No costs.

Sd/-

Assistant Registrar (CS-III)

// 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 District Judge,
Motor Accident Claims Tribunal
Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.K.BHASKARAN, Advocate (SR-1217[F] dated 19/01/2021)

C.M.A. (MD) .No.309 of 2011
in
MP (MD) No. 1 of 2011

11.01.2021

SE (CO)
NR (04/02/2021) 4P : 5C