

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	18.11.2021
DELIVERED ON	02.12.2021

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CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.M.A. (MD) .No. 1509 of 2013**

The Oriental Insurance
Company Limited,
Rep. By its Manager,
Saradha Complex, Simmakal,
Madurai.

...Appellant/2nd Respondent

Vs.

1.Mariammal
2.D.Kannan
3.D.Muthupandi
4.D.Muthulakshmi
5.Rakkammal
6.A.Rasa

...R-1 to R-5/Petitioners
...R-6/1st respondent

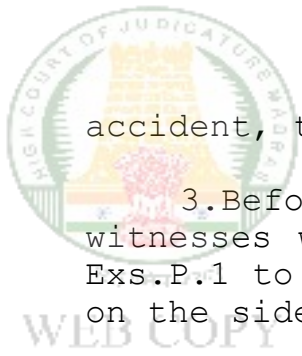
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 06.12.2012 made in M.CO.P.No.300 of 2008 on the file of the learned Motor Accident Claims Tribunal, District and Sessions Court (Communal Clash Cases) Madurai.

For Appellant :Mr.S.Veeranasamy
For Respondents :No appearance

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the award, dated 06.12.2012 in M.C.O.P.No.300 of 2008 passed by the learned Motor Accident Claims Tribunal/District and Sessions Court (Communal Clash Cases) Madurai.

2.It is a case of accident, which took place on 23.12.2006 night at 12'o clock the deceased Thangaraj with his son Muthupandi/3rd claimant along with three persons were rearing the cows in Madurai to Theni Road, near Jeyaraj Nadar Higher Secondary school, from west to east in the left side of the road, a lorry bearing registration No.TN-28-2390 belongs to the 6th respondent herein driven by its driver in a rash and negligent manner came behind and dashed against the deceased Thangaraj. Due to the said



accident, the deceased Thangaraj died on the spot.

3. Before the Tribunal, on the side of the claimant two witnesses were examined as P.Ws.1 & 2 and marked nine documents as Exs.P.1 to P.9. No witness was examined and no documents were marked on the side of the appellant and the 6th respondent herein.

4. The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the insurance company and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the lorry driver of the 6th respondent herein and directed the appellant/insurance company to pay a sum of Rs.5,48,000/-as compensation.

5. The appellant/insurance company has filed this present appeal against the award passed by the tribunal.

6. Heard on either side. Perused the material documents available on record.

7. The respondent Nos.1 to 5 herein/petitioners/claimants have filed a claim petition in M.C.O.P.No.300 of 2008 for claiming compensation, for the death of husband of the 1st respondent herein occurred in an accident on 23.12.2006, night at 12'o clock. The 2nd to 4th respondents herein are children of the deceased and the 5th respondent is mother of the deceased. The tribunal has awarded a sum of Rs.5,48,000/-as compensation with 7.5% interest.

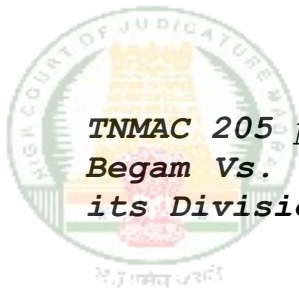
8. Aggrieved by the award order, dated 06.12.2012 the appellant herein/insurance company has filed this present Civil Miscellaneous Appeal on the ground that the quantum of award is very high.

9. The negligent driving of the lorry driver was proved by Ex.P.1/First Information Report. The Charge sheet was marked as Ex.P.2. The 6th respondent herein/1st respondent was set exparte.

10. The learned counsel appearing for the appellant/insurance company contended that, at the time of accident, the driver of the lorry was not having valid license. But, the driver of lorry was not examined as witness. Further, except pleading, no document was produced to prove that the driver of the lorry was not having valid license at the time of accident. Mere pleading is not sufficient.

11. The appellant/insurance company has raised an objection that the monthly income of the deceased fixed by the tribunal is very high and also the tribunal not deducted any amount for his personal expenses.

12. The relevant paragraph of the Judgment reported in **2010**
<https://hcservices.ecourts.gov.in/hcservices/>



TNMAC 205 passed by this Court in the case of **Abdul Rahik and Mumtaz Begam Vs. 1.Sundaresan 2.National Insurance Company Limited through its Divisional Manager, Madurai**, is extracted hereunder.

"In the absence of any definite evidence to ascertain the actual income of the deceased, the Honourable Supreme Court in *new India Assurance Company Limited Vs. Kalpana (Smt) and others*, 2007(1)TNMAC 1 (SC)2007 (3) SCC 538 fixed the monthly contribution of the deceased to the family after deducting 1/3 income towards personal expenses at Rs.3,000/-per month. Relying upon the said judgment, it can be safely presumed that even, in the absence of any material to prove the income of the deceased, this Court arrive at the monthly income of the deceased at Rs.3,000/-per month."

In view of the above, the monthly income after deducting 1/3 for personal expenses fixed at Rs.3,000/-Therefore, the tribunal has rightly fixed the monthly income of the deceased and applied multiplier method.

13.As already discussed above, the appellant/insurance company has not produced any documents to prove the violation of policy.

14.Therefore, the tribunal has rightly awarded the just compensation in this case. This Court has no valid reason to interfere with the award.

15.Finally, this Civil Miscellaneous Appeal is dismissed by confirming the award, dated 06.12.2012 in M.CO.P.No.300 of 2008 passed by the learned Motor Accident Claims Tribunal/District and Sessions Court (Communal Clash Cases) Madurai. The appellant/insurance company is directed to deposit the entire award amount, within a period of four weeks from the date of receipt of the order. If any excess amount deposited, the appellant/insurance company is permitted to withdraw the excess award amount. After depositing the award amount, the claimants are permitted to withdraw the entire award amount. No Costs.

Sd/-

Assistant Registrar (CS-III)

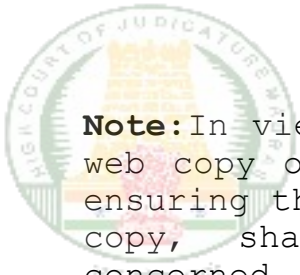
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Sub Assistant Registrar(CS)

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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.

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To

The Motor Accident Claims Tribunal,
District and Sessions Court (Communal Clash Cases),
Madurai.

Copy to

The Section Officer, V.R.Section
Madurai Bench of Madras High Court, Madurai (2C)

+1 CC to M/s.S.VEERANA SAMY, Advocate (SR-37154[F] dated 02/12/2021

C.M.A. (MD) .No.1509 of 2013
02.12.2021

TP (CO)
KB (04.01.2022) 4P 5C