



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 15.09.2021

Delivered On : 27.10.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.381 of 2013

1.Mariappan
2.Muniyammal

.. Appellants

Vs.

1.Subburaj
2.The Branch Manager,
Bajaj Allianz General Insurance Company Ltd.,
12-G, K.M.A. Complex,
1st Floor, Ram Nagar,
Bye-Pass Road,
Madurai - 10.
Madurai District.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 19.03.2009 and to enhance the award amount and to fix the liability on the insurance company/second respondent herein M.C.O.P.No.114 of 2005 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Sankarankovil and to direct the second respondent to pay the compensation to the appellants and to recover the same from the first respondent.

For Appellant : Mr.P.Krishnasamy

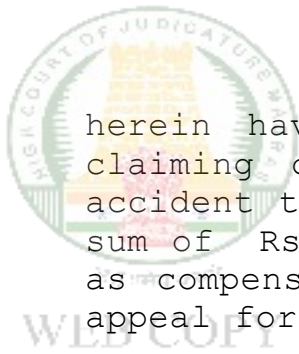
For 2nd Respondent : Mr.G.Maruthaiah

For 1st Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.114 of 2005 dated 19.03.2009, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankarankovil.

2.The appellants herein are the claimants and the respondents herein are the respondents in the claim petition. The appellants



herein have filed a claim petition in M.C.O.P.No.114 of 2005, claiming compensation for the death of one Jeyalakshmi, in an accident that took place on 16.06.2005. The Tribunal has awarded a sum of Rs.4,20,000/- (Rupees Four Lakhs and Twenty Thousand only) as compensation. Against which, the appellant has preferred this appeal for enhancement of compensation.

3.A brief substance of the claim petition in M.C.O.P.No.114 of 2005 is as follows:

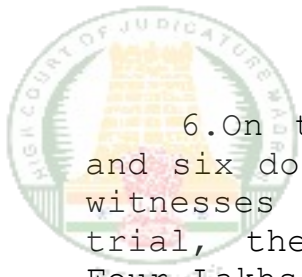
The deceased Jeyalakshmi was a coolie worker in Surya Fire works Company at Kammappatti. After the completion of her work, when she was waiting for the bus, at the request of the first respondent, the deceased boarded the vehicle, a mini auto bearing registration no.TN-76-Z-6152 that belongs to the first respondent. The driver cum owner, first respondent drove the vehicle in a rash and negligent manner and capsized the vehicle and the deceased sustained injuries. She was admitted in Sri Ram Clinic and then she was admitted in the Government Rajaji Hospital, Madurai. On 21.06.2005, she died succumbed to the death. The claimants are dependants of the deceased and they claim a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

4.A brief substance of the counter filed by the first respondent therein is as follows:

The accident did not took place due to the rash and negligent driving of the driver of the vehicle. The deceased and other labours restrained the auto and compelled the first respondent and travelled in the auto. Because of the overload of the labours, the first respondent lost the control and the auto capsized. Only due to the careful driving of the auto driver, the death of the other passengers had been avoided. The vehicle was insured with the second respondent and the policy was in force. The driver of the vehicle was also having valid driving licence. Only the second respondent is responsible to pay the compensation.

5.The brief substance of the counter filed by the second respondent therein is as follows:

On 16.06.2005, at about 05.45 p.m., the mini auto was driven by the driver in a slow and cautious manner. Suddenly, a cow crossed the road and in order to avoid dashing against the cow, the driver has applied the break. Due to the effect, the auto capsized and not due to the rash and negligent driving of the driver. The second respondent is not responsible to pay compensation. The amount claimed and the interest calculated by the petitioners are exorbitant. The deceased was travelling only as a gracious passenger. The claimants are not entitled to claim compensation.



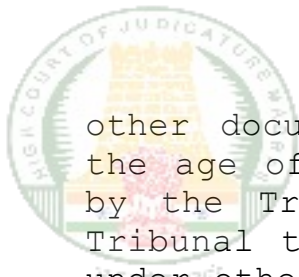
6.On the side of the claimants, two witnesses were examined and six documents were marked. On the side of the respondents, two witnesses were examined and two documents were marked. After trial, the Tribunal has awarded a sum of Rs.4,20,000/- (Rupees Four Lakhs and Twenty Thousand only) as compensation to be paid by the first respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal for enhancement of compensation.

7.On the side of the appellant, it is stated that the Tribunal ought to have fixed notional income at Rs.4,500/- per month. The Tribunal failed to consider **Kalpana case** reported in **2007 (1) TNMAC 1**. The Tribunal is erroneous in considering that the deceased to travel as a gracious passengers. The Tribunal ought to have observed that the deceased was not a gratuitous passenger but a coolie working under the owner of the vehicle. The first respondent being the owner of the vehicle has authorized the deceased to travel as his representative. The second respondent is liable to pay compensation. The amount awarded towards medical expenses, transport charges, extra nourishment expenses and love and affection are to be enhanced.

8.On the side of the second respondent, it is stated that the victim is an unauthorized passengers in the goods vehicle. The deceased was not carrying any goods. The deceased was waiting for the bus, at the time of boarding the mini auto. On payment of Rs.10/- as charge, the deceased and others were taken as passengers in the milk van. There was no statement of carrying the rice bag in the FIR. Only in the evidence, the claimants developed the case. There is no necessity to carry rice bag in a milk van. There was no question of loading or unloading. The Tribunal rightly exonerated the insurance company. There is no necessity for a direction to pay and recover. In support of this contention, a judgment passed this Court in the case of **Branch Manager v. Nagammal** reported in **2009 (1) CTC 1** is cited.

9.From the FIR and from the claim petition, it is clear that the deceased was waiting for bus in the bus stop at the time of boarding the auto. That means the deceased was not engaged as a load woman and the deceased was only a gracious passengers in the goods vehicle. The Tribunal is right in exonerating the insurance company from liability.

10.The accident took place in the year 2005. The Tribunal fixed the monthly income as Rs.3,000/- per month. Considering the year of the accident, the same is reasonable. Considering the post mortem report, the Tribunal has fixed the age of the deceased. No



other document was filed on the side of the petitioner to prove the age of the deceased. The fixation of the age of the deceased by the Tribunal is reasonable. Hence, the amount fixed by the Tribunal towards loss of income is reasonable. The amount awarded under other heads by the Tribunal is also reasonable.

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11. There is nothing sufficient enough to interfere in the order of the Tribunal. Hence, the order passed in M.C.O.P.No.114 of 2005 dated 19.03.2009, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankarankovil is confirmed. In the result, this Civil Miscellaneous Appeal is dismissed. The appellants are entitled to a sum of Rs.4,20,000/- (Rupees Four Lakhs and Twenty Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization from the first respondent.

12. The first respondent herein is directed to deposit Rs.4,20,000/- (Rupees Four Lakhs Twenty Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares as per the ratio apportioned by the Tribunal with proportionate interest after deducting any amount received by them earlier. Excess amount, if any deposited shall be refunded to the first respondent herein. The claimants are not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

MRN

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.MRN

To

1. The Motor Accidents Claims Tribunal,
Sub Judge,

Sankarankovil.

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



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

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