



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.07.2021

Delivered on: 16.08.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.M.A(MD) No.431 of 2013

1.Nallammal
2.Selvam
3.Chandran
4.Muthulakshmi

... Appellants/Claimants

Vs.

1.Ramesh
2.Manikandan
3.The New India Assurance Company Ltd.,
Having a Branch Office
at 674, Periyakulam Road,
Theni - 625 531.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed in M.C.O.P.No.18 of 2007, dated 26.03.2008 on the file of the Motor Accidents Claims Tribunal - Principal District and Sessions Judge, Theni.

For Appellant : Mr.D.Nallathambi
For R3 : Mr.R.Vijay Karthikeyan
R1 and R2 : Dismissed vide order, dated 26.06.2018

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award passed in M.C.O.P.No.18 of 2007, dated 26.03.2008 on the file of the Motor Accidents Claims Tribunal - Principal District and Sessions Judge, Theni.

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

3.Brief substance of the petition in M.C.O.P.No.18 of 2007 is as follows:

On 09.10.2004, at about 11.30 p.m., when the husband of the first petitioner, viz., Ponnangan was crossing the road, the first respondent drove the Auto bearing Registration No.TN-60-9549 in a rash and negligent manner and dashed against the deceased and he was seriously injured and died. The petitioners, who are the legal heirs of the deceased/ Ponnangan, claimed a sum of Rs.5,00,000/- as compensation.

4.Brief substance of the counter in M.C.O.P.No.18 of 2007 is as follows:

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The Auto bearing Registration No.TN-60-9549 was not involved in the accident. In the First Information Report, the date and time of the F.I.R. was mentioned as 10.10.2004, at about 2.00 p.m. Some other Auto has dashed against the deceased. There was no eye witness. Though the police station was available on the way to the hospital, no complaint was given immediately. The first respondent was not having a valid driving licence. The second respondent violated the policy conditions. Age, income, profession of the deceased has to be proved. The deceased was negligent in crossing the road and he invited the accident and the claimants filed a false claim petition.

5.Two witnesses were examined and Five documents were marked on the side of the petitioners. One witness was examined and one document was marked on the side of the respondents.

6.After hearing both sides, the Tribunal awarded a sum of Rs.2,10,000/- as compensation for the claimants. Against the order, the claimants have preferred this Civil Miscellaneous Appeal, for enhancement of compensation.

7.On the side of the appellant, it is stated that the Tribunal has fixed the liability only on the owner of the vehicle and it has to be fixed on the Insurance Company also. The third respondent / Insurance Company can pay the compensation at the first instance and the third respondent can recover the amount from the owner of the vehicle. The earning capacity of the deceased was Rs.4,500/- per month. But, the Tribunal has fixed the earning capacity only as Rs.27,000/- per year. The amount awarded under various other heads is also very low and prayed an additional sum of Rs.2,90,000/- has to be awarded.

8.On the side of the third respondent, it is stated that the Tribunal exonerated the Insurance Company. The driver was not having valid driving licence. The charge sheet was filed against the driver under Section 304(A) I.P.C and Section 3 r/w. 181 of the Motor Vehicles Act. Since the policy conditions are violated, the Insurance Company is not liable to pay compensation. When the driver is not having valid driving licence, the Insurance Company is not liable to pay compensation. A judgment of this Court passed in C.M.A.Nos.3506 and 3507 of 2014, dated 08.11.2020 is cited. There is no necessity for the Insurance Company to pay the claimants and then to recover it from the owner of the vehicle. The owner of the vehicle alone is responsible for paying compensation.

9.As per the settled position, it is decided that the Insurance Company is liable to pay the compensation at the first instance and the Insurance Company can claim the compensation amount from the owner of the vehicle.



10. On the side of the appellants, it is stated that the income fixed by the Tribunal is low. The age of the deceased at the time of accident is 50 years. The notional income at the time of accident is fixed as Rs.3,000/- per month and after including 25% for future prospects, it comes Rs.3,750/- per month. After deducting $1/3^{\text{rd}}$ income towards the personal expenses of the deceased, it comes Rs. 2,500/- per month. The multiplier relevant is '11'. Hence, it is decided that the claimants are entitled to Rs.3,30,000/- [Rs.2,500/- X 11 X 12 = Rs.3,30,000/-] towards loss of income. For loss of consortium, funeral expenses, loss of love and affection and for transport expenses, etc., a sum of Rs.40,000/- is awarded.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the award passed in M.C.O.P.No.18 of 2007, dated 26.03.2008 on the file of the Motor Accidents Claims Tribunal - Principal District and Sessions Judge, Theni, is hereby enhanced from Rs.2,10,000/- to Rs.3,70,000/-.

12. The third respondent / Insurance Company is directed to deposit Rs.3,70,000/- along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. Thereafter, the third respondent / Insurance Company can recover the same from the owner of the vehicle. On such deposit being made, the appellants / claimants are permitted to withdraw their respective shares as apportioned by the Tribunal. The Claimants are not entitled for interest for the default period if there is any default. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

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 Motor Accidents Claims Tribunal -
Principal District and Sessions Judge,
Theni.

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



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

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+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-26410[F] dated
16/08/2021)

+1 CC to M/s.D.NALLATHAMBI (R.MURUGAN), Advocate (SR-26436[F] dated
16/08/2021)

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