



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.10.2021

Delivered on : 08.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD) No.561 of 2014

and

M.P.(MD)No.1 of 2014

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The Branch Manager,
The Royal Sundaram Alliance Insurance Co.Ltd.,
2nd Floor, Kathar Navaskhan Road,
Chennai - 06.

... Appellant/2nd Respondent

Vs.

1. Paneer Selvam
2. Malathi

... 1&2 Respondents/1&2 Petitioners

3. M/s Velammal Matric Higher Secondary School,
Velammal Nagar,
Rameswaram High Road, Viraganoor,
Madurai District.

... 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the fair and decreetal order dated 29.01.2014 made in M.C.O.P.No. 106 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Judge at Uthamapalayam.

For Appellant : Mr.M.Jerin Mathew

For R1 & R2 : Mr.G.Vanjinathan

For R3 : Mr.L.Shaji Chellan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 29.01.2014, made in M.C.O.P.No. 106 of 2012, on the file of the Motor Accident Claims Tribunal - Sub Judge, Uthamapalayam.

2. The appellant herein is the second respondent, the respondents 1 and 2 herein are the claimants and the third respondent herein is the first respondent in the original claim petition.

3. Brief substance of the claim petition, in M.C.O.P.No. 106 of 2012, is as follows:



On 17.08.2012 at about 5.45 pm, the deceased- Pradeesh was riding his bicycle along the Rayappanpatti - Anamalayanpatti Road, near Michal Thirumana Mandapam, along the left edge of the road, at the time, a school bus bearing Registration No.TN-64-A-8214 was driven by its driver in rash and negligent manner, came from the back side, dashed against the deceased and the deceased sustained severe injuries and he was taken to Government Hospital, Uthamapalayam and then, he was taken to Government Hospital, Theni and then, he died. The claimants are the dependents of the deceased and they claimed a sum of Rs.10,00,000/- as compensation.

4. Brief substance of the counter filed by the first respondent, in M.C.O.P.No. 106 of 2012, is as follows:

The manner of accident as detailed in the petition are all denied. On the date of the accident, the driver of the respondent vehicle drove the vehicle in a moderate speed, adhering to the traffic rules, at the time, the deceased suddenly attempted to cross the road and as he was unable to control the speed of the bicycle he fell down. It was the deceased, who invited the accident and the respondent is not liable to pay any compensation. The claim is excessive.

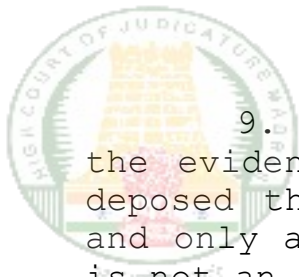
5. Brief substance of the counter filed by the second respondent, in M.C.O.P.No. 106 of 2012, is as follows:

The details of the alleged accident are all denied. The driver of the first respondent drove the vehicle carefully and diligently. The petitioner has to prove that the first respondent vehicle driver was having a valid driving licence. The injuries, period of treatment, permanent disability, age, occupation and income are all denied. The claim is excessive.

6. Two witnesses were examined and eight documents were marked, on the side of the petitioners. No witness was examined and no document was marked on the side of the respondents.

7. The Tribunal, after considering both sides, has awarded as a sum of Rs.5,30,000/- as compensation. Against the award, the second respondent/ appellant has approached this Court by way of this Appeal.

8. On the side of the appellant, it is stated that the claimants failed to prove that the accident occurred due to the negligence of the bus driver and the onus of proof rests on the claimants and not on the appellant. P.W.2 is only a hear-say witness. There was no other evidence to substantiate the claim of the claimants. Ex.P1, based on the complaint given by PW.2, is not credible. The Tribunal has failed to deduct 50% towards the personal expenses. The award is excessive.



9. On the side of the appellant, it is further stated that the evidence of PW.2 is not supporting the claimants and he has deposed that he saw the occurrence only after hearing the noise and only after the boy fell down, which clearly reveals that PW.2 is not an eye witness.

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10. On the side of the respondents / claimants, it is stated that P.W.2 has deposed that the accident was only due to the rash and negligent driving of the driver of the bus. There is no necessity for the claimants, to prove the case beyond all the reasonable doubts. It is sufficient to prove the case summarily. The income fixed by the Tribunal is very low. The Tribunal has failed to consider the future prospects. The multiplier applied by the Tribunal is wrong. The award is very low. It is further stated that this Court can enhance the award amount, even without the filing of any cross objection.

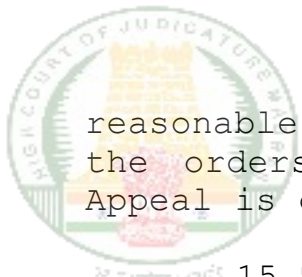
11. On the side of the appellant, it is stated that there is no possibility of enhancement of compensation in an appeal that was filed by the Insurance Company, when there was no counter claim or cross objection filed by the claimants.

12. P.W.2 has deposed that the accident happened due to the rash and negligent driving of the bus driver. There was no rebuttal evidence on the side of the respondents. The appellant has failed to take steps to disprove the case of the claimants. The minor contradictions in the evidence of P.W.2 cannot be taken into consideration, since the evidence of P.W.2 is clear as to the manner of accident. Copy of the F.I.R. reveals that the F.I.R. was registered against the bus driver. In the above circumstances, it is decided that the accident took place due to the rash and negligent driving of the bus driver.

13. Another ground raised by the appellant is that the driver of the vehicle was not having a valid driving licence, at the time of accident, but, the appellant has not taken any steps to prove the same. In the above circumstances, it is decided that there was no violation of policy conditions.

14. Copy of the R.C. book and permit were already filed as Ex.P5 and Ex.P6. The Tribunal has awarded Rs.30,000/- per annum as salary for the 16 years old deceased and applied multiplier '16'. The case of the appellant is that the Tribunal has failed to deduct 50% towards own expenses. The case of the respondents / claimants is that the Tribunal has failed to consider the future prospects. The future prospects to be taken into consideration for an unmarried person is 50%. Both deduction for own expenses and addition for future prospects are equal. In the above

<https://hcservices.mca.gov.in/Services/> the compensation fixed by The Tribunal is



reasonable. There is nothing sufficient enough to interfere in the orders of the Tribunal and hence this Civil Miscellaneous Appeal is dismissed.

15. The appellant/Insurance Company, is directed to deposit the entire award amount of Rs. 5,30,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and with costs within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the respondents 1 and 2 / claimants are permitted to withdraw their respective share as per the ratio fixed by the Tribunal with proportionate interest, after deducting any amount received by them earlier. The Claimants are not entitled for interest for the default period if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar (CS)

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To

1. The Subordinate Judge,
Motor Accident Claims Tribunal, Uthamapalayam.
 2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.
- +1 CC to M/s.G.VANJINATHAN, Advocate SR-37975[F] dated 09/12/2021)
+1 CC to M/s.M.E.ILANGO, Advocate (SR-38006[F] dated 09/12/2021)
+1 CC to M/s.L.SHAJICHELLAN, Advocate SR-37966[F] dated 09/12/2021

Pre-delivery Judgment made in
C.M.A(MD) No.561 of 2014

08.12.2021