



WEB COPY

C.M.A.(MD)No.298 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.04.2021

Delivered On : 26.04.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.298 of 2018

and

C.M.P.(MD)No.4137 and 11655 of 2018

The Oriental Insurance Co. Ltd.,
Rep. By its Regional Manager,
TP Claims Hub,
North Veli Street,
Madurai - 625 001.

..Appellant/Respondent

Vs.

1.M.Karupayee
2.M.Sivaselvi
3.P.Chinnamalar
4.A.Ayyadurai
5.A.Muthuprabhu

.. Respondents 1 to 5/Petitioners 1 to 5

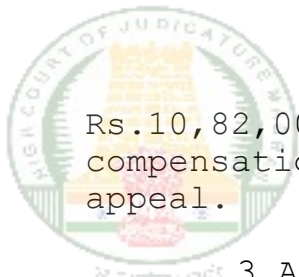
Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award of Rs.10,82,000/- (Rupees Ten Lakhs Eighty Two Thousand only) passed in M.C.O.P.No.288 of 2015 dated 17.06.2017, on the file of the Motor Accidents Claims Tribunal cum Special District Judge/MACT, (incharge), Madurai.

For Appellant	: Mr.K.Baskaran
For Respondents	: Mr.V.Kishokkumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.288 of 2015 dated 17.06.2017, on the file of the Motor Accidents Claims Tribunal cum Special District Judge/MACT, (incharge), Madurai.

2.The appellant herein is the respondent and the respondents herein are the petitioners 1 to 5 in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.288 of 2015, claiming compensation for the death of one Lakshmi in an accident that took place on 01.07.2015. The Tribunal has awarded a sum of



Rs.10,82,000/- (Rupees Ten Lakhs Eighty Two Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.288 of 2015 is as follows:

On 01.07.2015, the deceased Lakshmi was travelling as a pillion rider in a two wheeler bearing Registration No.TN-58-AH-8372 driven by her husband Arasappan. He drove the vehicle in a rash and negligent manner and dashed against the electric pole. The deceased fell down and sustained injuries and died on the spot. The deceased was earning Rs.10,000/- (Rupees Ten Thousand only) per month at the time of accident. The claimants are the dependants of the deceased and they claimed a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as compensation.

4.The brief substance of the counter filed by the appellant/respondent is as follows:

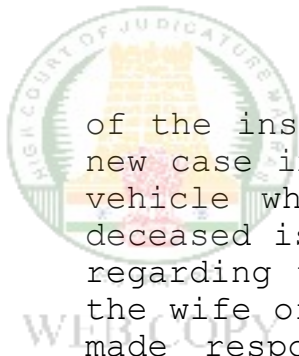
The deceased caused accident and that she failed to hold the vehicle properly. Since the accident took place due to negligence of the deceased, the appellant is not liable to pay compensation.

5.After trial, the Tribunal awarded a sum of Rs.10,82,000/- (Rupees Ten Lakhs Eighty Two Thousand only) as compensation to be paid to the respondents. Against which, the appellant has preferred this appeal.

6.On the side of the appellant, it is stated that the accident was due to the rash and negligent driving of the owner of the vehicle. The owner of the vehicle is the husband of the deceased. Since the accident took place only due to rash and negligent driving of the owner of the vehicle, the Insurance Company is not liable to pay the compensation. Since the insurer is at fault atleast contributory negligence has to be fixed upon the owner of the vehicle and prayed the award to be set aside.

7.On the side of the respondents, it is stated that the mother of the claimants died in the accident. The owner of the vehicle is also no more. The respondents have not raised the issue regarding the negligence of the owner of the vehicle before the Tribunal. Mere relationship between the rider and pillion rider will not curtail the rights of the legal heirs of the pillion rider. The pillion rider is third party to the insurance company. Only Rs.2,000/- (Rupees Two Thousand only) was fixed as income of the deceased and there is no necessity to set aside the award.

8.It is seen that the accident took place due to the rash and negligent driving of the driver of the two wheeler. It is stated that the driver of the two wheeler is the owner of the vehicle. The insurance company has not raised any issue regarding the liability



of the insurer before Tribunal. The insurance company is creating a new case in the stage of appeal. It is stated that the owner of the vehicle who is the father of the claimants is also no more. The deceased is the mother of the claimants. There is no serious dispute regarding the quantum fixed by the Tribunal. Though the deceased is the wife of the owner, she is only a pillion rider and she cannot be made responsible for the act of her husband. According to the insurance company, the deceased is a third party. There is no dispute regarding the validity of the policy. The insurance company did not take the stand as to the liability of the insurer at the time of trial.

9.In the above circumstances, there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.288 of 2015 on the file of the Motor Accidents Claims Tribunal, cum Special District Judge/MACT, (incharge), Madurai. Hence, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

To

1.The Motor Accidents Claims Tribunal,
Special District Judge/MACT, (incharge),
Madurai.

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

+1 CC to M/s.V.S.KISHO KUMAR, Advocate (SR-17637[F] dated 27/04/2021)

+1 CC to M/s.K.BHASKARAN, Advocate (SR-17646[F] dated 27/04/2021)

C.M.A. (MD) No.298 of 2018
26.04.2021

SGS(CO)
TR(19.05.2021) 3P 6C