



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 26.10.2021

Delivered On : 23.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

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C.M.A. (MD)No.322 of 2018

and

C.M.P. (MD)No.4357 of 2018

The Branch Manager,
The Oriental Insurance Company Limited,
PLA Building,
No.12 Kovai Road,
Karur.

Vs.

... Appellant/2nd Respondent

1.K.Chandralekha	... 1 st Respondent/1 st Petitioner
2.K.Ravikumar	... 2 nd Respondent/ 2 nd Petitioner
3.A.Krishnaveni	... 3 rd Respondent/3 rd Petitioner
4.K.Ganeshkumar	... 4 th Respondent/4 th Petitioner
5.R.Karthikeyan	... 5 th Respondent/1 st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order, dated 22.12.2017, made in M.C.O.P.No.40 of 2017 (M.C.O.P. Old No.1 of 2013) on the file of the Motor Accident Claims Tribunal Cum Principal Sub Judge, Karur and allow this civil miscellaneous appeal.

For appellant	: Mr.E.Chandrasekaran
For R1 to R4	: Mr.N.Sudhagar Nagaraj
For R5	: Mr.G.Venugopal

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award passed by the Motor Accident Claims Tribunal Cum Principal Sub Judge, Karur in M.C.O.P.No.40 of 2017 (M.C.O.P. Old No.1 of 2013), dated 22.12.2017.

2.The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in M.C.O.P.No.40 of 2017.

3.Brief substance of the claim petition, in M.C.O.P.No.40 of 2017, is as follows:

On 25.05.2011, at about 10.15 p.m., when the deceased, viz., Kandasamy, was standing in front of the jewellery shop as a watchman, a lorry bearing Registration No. TSD 7569 driven by its driver in a rash and negligent manner, dashed against so many persons and dashed against Kandasamy. He was seriously injured and was taken to KMC hospital and on the way to the hospital, he died succumbed to the



injuries. The petitioners are the defendants of the deceased and they claim a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) as compensation.

4.Brief substance of the Counter filed by the first respondent in M.C.O.P.No.40 of 2017, is as follows:-

The vehicle was insured with the second respondent. The first respondent is not liable to pay any compensation. The lorry driver is not having valid driving licence. The mode of accident as narrated in the petition is wrong. The accident took place due to the negligence of the deceased. The age of the deceased and medical expenses are all denied. The claim is excessive.

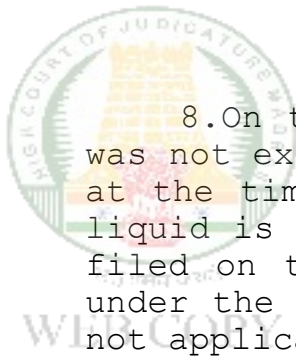
5.Brief substance of the Counter filed by the second respondent in M.C.O.P.No.40 of 2017 , is as follows:-

The first respondent / lorry driver drove the vehicle in a slow and cautious manner. It was the deceased who tried to cross the road without observing the traffic and he invited the accident. The second respondent is not liable to pay compensation. The driver of the lorry consumed alcohol at the time of accident which is against the Motor Vehicle Act and the lorry driver and the owner of the vehicle are liable to pay compensation and not the insurance company. The age, avocation, income, medical expenses are all denied and the claim is excessive.

6.Two witnesses were examined and 18 documents were marked on the side of the petitioners. Three witnesses were examined and one document was marked on the side of the respondents. Two documents were marked as witness documents. After hearing both sides, the Tribunal has awarded a sum of Rs.8,83,788/- (Rupees Eight Lakhs Eighty Three Thousand Seven Hundred and Eighty Eight only) as compensation. Against the same, the appellant has filed this Civil Miscellaneous Appeal.

7.On the side of the appellant, it is stated that the loss of income fixed by the Tribunal is excessive. The Tribunal fixed the monthly income as Rs.7,500/-. The driver of the lorry has consumed alcohol at the time of accident and the same was established by the appellant before the Tribunal through the evidence of R.W.1 and through Ex.X1 and Ex.X2. The Tribunal is wrong in fixing the liability on the appellant instead of the owner of the vehicle. Ex.X1 is the statement given by the doctor under Section 161 (3) Cr.P.C., wherein it is stated that the driver was under the influence of alcohol. A case in C.C.No.111 of 2013 was registered against the driver of the vehicle for drunken driving. The Tribunal ought to have ordered pay and recovery. If the owner handed over the vehicle to the drunken driver, the Court can ordered for pay and recover. In support of this contention, a judgment of the Hon'ble

<https://hcservices.courts.gov.in/hcservices/> **Shila Dutta** case reported in **2011 (2) TNMAC 481.**



8. On the side of the respondents, it is stated that the Doctor was not examined to prove that the driver of the vehicle was drunken at the time of accident. Only when 30 ml of alcohol in 100 ml of liquid is available that can be named as drunken. No documents were filed on the side of the appellant to prove that the deceased was under the influence of alcohol. Section 185 of Motor Vehicle Act is not applicable to this case and prayed the petition to be dismissed.

9. On the side of the fifth respondent, it is stated that the appellant has admitted that the driver of the lorry was not responsible for the accident and that it was the deceased who crossed the road without observing the traffic. The appellant has raised the objections regarding drunken driving only in the appeal and not before the Tribunal. The appellant cannot take two different stands in the same case.

10. A person by name Bala Murugan met with an accident and he sustained injury in the same accident and he filed a petition in M.C.O.P.No.163 of 2011 and the appellant was held liable to pay compensation in that case. The judgment of M.C.O.P.No.163 of 2011 was marked as Ex.P.18. The stand taken in M.C.O.P.No.163 of 2011 is that it was the deceased who tried to cross the road. Now a different stand has been taken by the appellant which is not permissible. The liability in M.C.O.P.No.163 of 2011 was fixed only on this appellant. There was no appeal against the order in M.C.O.P.No.163 of 2011.

11. The copy of the FIR was marked as Ex.P1. Rough sketch was marked as Ex.P3. Motor Vehicle Inspection report was marked as Ex.P4 and chargesheet was marked as Ex.P5. From the evidence of PW.2 and on the basis of Ex.P1 to Ex.P5, it is decided that the accident took place due to the rash and negligent driving of the lorry driver. Ex.X1 was the 161(3) statement recorded by the Police and case sheet extract was marked as Ex.X2. These two documents are not sufficient enough to prove that the driver of the vehicle was under the influence of alcohol at the time of accident. It is seen that no alcohol test was conducted and the person who issued Ex.X1 was not examined before the Tribunal.

12. On the side of the Appellant, it is stated that no document was filed to prove that the deceased was earning Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) as a watchman.

13. On the side of the claimants, it is stated that deceased was earning Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) per month, as a watchman in the jewelry shop. No documents are filed on the side of the petitioner to prove the income. Hence, the notional income is fixed as Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month. The claimants are four in number and hence $\frac{1}{4}$ th is to be deducted for the personal expenses. After deducting $\frac{1}{4}$ th, expenses, the deceased might have contributed



Rs.4,875/- (Rupees Four Thousand and Eight Hundred and Seventy Five only) to his family. The age of the deceased at the time of the accident is 54 years. No documents was filed on the side of the petitioner to prove the age of the deceased. Only based on the oral evidence of PW.1, the age of the deceased was fixed as 54 years. The only available document regarding the age of the petitioner is Ex.P2, wherein the age of the deceased is mentioned as 58 years. Hence, the age of the deceased is fixed as 58 and multiplier '9' is applicable. The loss of income is calculated as Rs.5,26,500/- (Rupees Five Lakhs Twenty Six Thousand and Five Hundred only). The medical bills were marked as Ex.P7 and the claimants are entitled for Rs.36,288/-, as medical expense which is rounded to Rs.36,500/- (Rupees Thirty Six Thousand and Five Hundred only). As per **Praney Sethi** case, the claimants are entitled for Rs.70,000/- (Rupees Seventy Thousand only) towards conventional charges. In total, the claimants are entitled to Rs.6,33,000/- (Rupees Six Lakhs Thirty Three Thousand only) as compensation.

14.Hence, it is decided that the respondents 1 to 4 herein / claimants are entitled to a sum of Rs.6,33,000/- (Rupees Six Lakhs Thirty Three Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

15.The appellant / Insurance Company is directed to deposit Rs.6,33,000/- (Rupees Six Lakhs Thirty Three Thousand only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount 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 fixed by the Tribunal with interest after deducting any amount received by them earlier. The major claimants are not entitled for interest for the default period, if there is any. Excess amount, if any deposited shall be refunded to the appellant herein. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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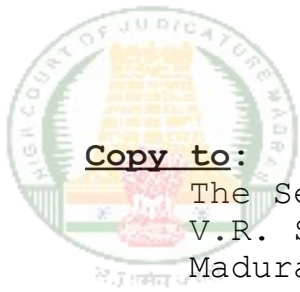
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Sub Assistant Registrar(CS)

mga/csm

TO
THE PRINCIPAL SUBORDINATE JUDGE,
MOTOR ACCIDENT CLAIMS TRIBUNAL, KARUR.

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The Section Officer,
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Madurai Bench of Madras High Court, Madurai - 2 Copies

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+1 CC to M/s.M.P.SENTHIL, Advocate (SR-40500 dated 27/12/2021)

C.M.A. (MD) No.322 of 2018

and

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23.12.2021

TP (CO)

GC (12.01.2022) 5P 5C