



C.M.A.No.1058 of 2012
& Cross Objection No.61 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.2.2022
Pronounced on	02.08.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.M.A.No.1058 of 2012
a n d M.P.No.1 of 2012 & M.P.No.1 of 2013
Cross Objection No.61 of 2013

The New India Assurance Co Ltd
Perambalur.

...

Appellant

Vs

1. Selvaraj
2. Dhanaraj
3. United India Insurance Co Ltd
Sali Road, Tiruchirapalli 18.
4. Jayalakshmi

...

Respondents

Prayer In C.M.A.No.1058 of 2012: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16/5/2011 made in M.C.O.P.No.730 of 2003 on the file of the Motor Accidents Claims Tribunal (Fast Track Court, Additional District Judge), Ariyalur.



C.M.A.No.1058 of 2012
& Cross Objection No.61 of 2013

Cross Objection No.61 of 2013

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Selvaraj

...

Petitioner

Vs

1. The New India Assurance Co Ltd
Perambalur.
2. Dhanaraj
3. United India Insurance Company Ltd
Salai Road, Tiruchirapalli 18.
4. Jayalakshmi

...

Respondents

Prayer in Cross Objection No.61 of 2013: Cross Objection filed by the Cross Objector under Order XII Rule 22 of the Code of Civil Procedure as against the judgment and decree passed in M.C.O.P.No.730 of 2003 dated 16/5/2011 on the file of the Motor Acts Claims Tribunal and Additional District Judge, Fast Track Cour, Ariyalur.

For appellant ...
(in C.M.A.No.1058 of 2012)

Mr.M.K.Krishnamoorthy

For respondents ...
(in C.M.A.No.1058 of 2012)
For Cross Objector

Mr.N.C.Ashok Kumar
for R.1.
No appearance for R.2
Mr.D.Bhaskaran
for R.3.



C.M.A.No.1058 of 2012
& Cross Objection No.61 of 2013

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COMMON JUDGMENT

The New India Assurance Co Ltd., Perambalur, has preferred this Civil Miscellaneous Appeal, challenging the award, dated 16/5/2011, passed by the Motor Accidents Claims Tribunal (Fast Track Court, Additional District Judge), Ariyalur, made in MCOP No.730 of 2003.

Cross Objection No.61 of 2013 has been filed by the claimant/Petitioner seeking enhancement of compensation awarded by the Tribunal.

2. The CMA filed by the New India Assurance Co.Ltd., is on the ground that the motor cycle insured with the appellant has been falsely implicated in the accident. The tribunal erred in not properly considering Ex.P.1-FIR which has been lodged on the basis of the complaint given by the Village Administrative Officer that the deceased pedestrian fell on the gravels and sustained head injuries.

3. For the sake of convenience, the parties are referred to in this common judgment as per their ranking before the Tribunal.

4. The facts leading to the case on hand is as under:- MCOP.No.730 of 2003



C.M.A.No.1058 of 2012
&Cross Objection No.61 of 2013

has been filed by the claimant/Petitioner claiming compensation of Rs.4,00,000/- for the death of his mother Anjalamb. In the MCOP, third respondent-Jayalakshmi is the daughter of the deceased.

5. The averments in the claim petition filed by the claimant is that on 08.12.1992, at about 5 p.m., while the deceased Anjalamb travelled as pillion rider in a motor cycle [TVS 50 Reg.No.TN 45 Y 3993] belonging to the first respondent, one Damodaran, drove the motor cycle in a rash, negligent and high speed, resulting in the accident wherein, Anjalamb was thrown out of the two wheeler. She sustained head injuries and other grievous injuries and died on 09.12.1992.

6. Originally the claimant/petitioner stated that United India Insurance is the insurer of the motor cycle involved in the accident. But thereafter, on coming to know the correct facts, stated New India Assurance is the insurer of the vehicle.

7. Before the Tribunal, 1st respondent/owner of the vehicle filed counter stating that his vehicle was not driven by Damodharan and the deceased Anjalamb not travelled as pillion rider in his two wheeler, as such, resisted the claim petition



C.M.A.No.1058 of 2012
& Cross Objection No.61 of 2013

stating the averments are false.

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8. 4th respondent/New India Assurance filed counter stating that the claim petition has been filed suppressing the real truth and actually the deceased while walking on the road, fell down, suffered injuries and died.

9. The claimant filed proof affidavit before the Tribunal stating that he is the son of the deceased and 3rd respondent Jayalakshmi is his sister and also submitted that while travelling as pillion rider, his mother Anjalam fell down from the vehicle due to rash driving of the rider of the vehicle viz., Dhamodharan and died due to the head injuries.

10. The learned Judge, Tribunal, after going through pleadings, counter and evidence adduced on both sides answered the issues that Ex.R.2 -161 (3) Cr.P.C., Statement clearly shows that the deceased Anjalam travelled in the motor cycle driven by Damodharan. There is no explanation on the side of Respondent/insurance company for Ex.R.1 –C.D.file and the evidence of R.W.2, who examined 3 witnesses to come to a conclusion that the accident has taken



C.M.A.No.1058 of 2012
&Cross Objection No.61 of 2013

place as stated on the side of petitioner.

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11. The learned Judge, held that if Anjalam fell down on the ground when she was walking, there is no chance to sustain such kind of grievous injuries which would cause death. Just because the First Information Report (FIR) was given with delay, it cannot be concluded that a false case was registered as against the driver. Ex.R.1 and the evidence of R.W.2 is intact; the deceased fell down from the motor cycle, sustained injuries and died and the driver of the first respondent is responsible for the accident.

12. The tribunal, proceeded to point out that P.W.2 is the eye witness who clearly deposed that the driver Damodharan is responsible for the accident. Since it is not disputed by the first respondent that he is the owner of the vehicle and the 4th respondent is the insured, 4th respondent/New India Assurance Company is liable to pay the compensation.

13. The learned Judge, on the aspect of Legal Representative of the deceased Anjalam, pointed out that Ex.P.4 is the L.R.Certificate; petitioner and the third



C.M.A.No.1058 of 2012
&Cross Objection No.61 of 2013

respondent are the LR's of the deceased Anjalani.
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14. In respect of quantum of compensation, the tribunal found that absolutely no evidence on the side of petitioner to say that the deceased Anjalani was a milk vendor and she was earning Rs.3000/- per month. On the other hand, accepting that petitioner and the third respondent lost their mother thereby loss of love and affection and towards expenses met out by the petitioner is to be compensated, awarded Rs.1,50,000/- as compensation for the death of the deceased Anjalani. Further the Tribunal, held that petitioner is entitled to get Rs.1,00,000/- with interest and cost and the 3rd respondent is to get Rs.50,000/- with interest and cost. Further directed the 4th respondent-Insurance Company to pay the compensation to the legal heirs of the deceased viz., petitioner and 3rd respondent.

15. This court is of the considered opinion that the Tribunal has rightly arrived at the conclusion that the accident had occurred all due to rash and negligent driving of the driver of the two wheeler and since the said vehicle has been insured with the appellant/Insurance Company, it is squarely liable to make



C.M.A.No.1058 of 2012
&Cross Objection No.61 of 2013

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the loss occurred to the claimant/petitioner as well as the third respondent.

16. Keeping in view that the compensation awarded by the Tribunal is a just and fair compensation, this court has no hesitation to reject the cross objection filed by the claimants, seeking enhancement of compensation.

17. For the aforementioned reasons, this Civil Miscellaneous Appeal as well as the Cross-Objection are dismissed. The appellant/insurance company has already been directed by this court to deposit the entire award amount vide order dated 23.04.2012 while granting stay. In such view of the matter, the claimants viz., petitioner and 3rd respondent [son and daughter of the deceased] are permitted to withdraw the same in the same portion as determined by the Tribunal with accrued interest and costs. Interim stay stands vacated. No costs.

02 .08.2022

Index : Yes/No
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C.M.A.No.1058 of 2012
& Cross Objection No.61 of 2013

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- To
- 1.The Additional District Judge
The Motor Accidents Claims Tribunal
Fast Track Court,, Ariyalur.
 2. The Section Officer, V.R.Section, High Court, Madras.



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C.M.A.No.1058 of 2012
& Cross Objection No.61 of 2013

J.NISHA BANU, J

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JUDGMENT IN

C.M.A.No.1058 of 2012

and Cross Obj.61 of 2013

02.08.2022