



C.M.A.(MD)No.1083 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 02.11.2022

Delivered On : 28.11.2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1083 of 2009

Madurai Municipal Corporation,
Through its Commissioner,
Corporation Building,
Tallakulam, Madurai-2.

.. Appellant / Respondent

Vs.

1.Allavudeen

2.Alima Beevi

.. Respondents / Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair order and decretal order, made in M.C.O.P.No.617 of 2008, dated 04.02.2009, on the file of the Motor Accident Claims Tribunal – Additional District and Sessions Judge – Fast Track Court No. 3, Madurai.

For Appellant

: Mr.Suresh Kumar

For Respondents

: Mr.A.Haja Mohideen



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.617 of 2008, dated 04.02.2009, on the file of the Motor Accident Claims Tribunal – Additional District and Sessions Judge – Fast Track Court No. 3, Madurai. The appellant herein is the respondent and the respondents herein are the claimants in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.617 of 2008, is as follows:

On 29.10.2007, when the deceased -Shahul Hamed was riding a motorcycle bearing Registration No.TN-55-K-8484, observing the traffic rules in a slow and cautious manner, keeping the left side of the Tamil Sangam road, a water tank lorry, bearing Registration No.TN-59-2952, which was driven by its driver in a rash and negligent manner dashed against the motorcycle from behind and the deceased died on the spot. The deceased was studying in Engineering Diploma course in Seethaiammal Polytechnic College and he was planning to go aboard, after the completion of the education. There was possibility of the deceased to have a salary of Rs.20,000/- per month. The petitioners are his dependents and they claimed a sum of Rs.10,00,000/- as compensation.



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WEB COPY 3. A Brief substance of the counter filed by the respondent, in M.C.O.P. No.617 of 2008 is as follows:

The lorry bearing Registration No.TN-59-2952 was not at all used by its driver on that date and that the lorry did not dash against the deceased. Without proper investigation, a case was registered against the driver of the respondent. Neither the lorry nor the driver-Chellapandi involved in the accident. The driver-Chellapandi already gave a petition before the Deputy Commissioner of Police and before the High Court, Madurai Bench, requesting to quash the proceedings against him. The age, education, future prospects, earning capacity of the deceased are to be proved.

4. 2 witnesses were examined and 6 documents were marked, on the side of the claimants. 1 witness was examined and 4 documents were marked, on the side of the respondent. After considering both sides, the Tribunal has awarded a sum of Rs.6,31,000/- as compensation along with interest at the rate of 9% p.a..

5. Against the order, the respondent / appellant has filed this appeal on the following grounds:-



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WEB COPY The Tribunal failed to consider that the lorry was not involved in the accident and the same was proved from the statement of R.W.1. The Tribunal is wrong in fixing the income, without any material evidence. Fixing 9% interest is excessive. The claimants identified a wrong vehicle and on that ground alone, the petition is to be dismissed. The Tribunal erroneously fixed the burden of proof on the appellant.

6. On the side of the appellant, it is stated that the vehicle-lorry and R.W.1 were not involved in the accident. It was another lorry that belonged to the respondent which involved in the accident. The Tribunal failed to consider this matter and the Tribunal is wrong in fastening the burden of proof on the appellant.

7. On the side of the respondents, it is stated that the claim of the Corporation is that some other lorry involved in the accident and that the petitioner mentioned Corporation lorry was not involved in the accident. Though the appellant has claimed that some other lorry that belonged to the appellant was involved in the accident, the appellant has not come forward to furnish the details of the offending vehicle.



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WEB COPY 8. P.W.2 was examined as an eye witness. Ex.P1 was the copy of F.I.R. Ex.P3 was the copy of charge sheet. From the evidence of R.W.1, it is clear that the criminal case is still pending. R.W.1 has deposed that some other vehicle that belonged to the same Corporation has involved in the accident. A letter sent to the police Commissioner was marked as Ex.R3 and a petition filed by R.W.1, in CrI.O.P.(MD)No.2561 of 2008, was marked as Ex.R4. Ex.P1, Ex.P3 and the evidence of P.W.3 are against R.W.1. Whether R.W.1 is responsible for the accident can be decided by the Criminal Court. Taking into consideration the evidence of P.W.1 and Ex.P1 and Ex.P3 and taking into consideration the evidence of R.W.1, it is decided that a lorry that belonged to the appellant has caused the accident. Hence, it is decided that the appellant is liable to pay compensation.

9. The accident has happened in the year 2007 and the notional income at that period is Rs.4,500/- per month. After deducting 50% for the own expenses of the deceased, it is decided that the deceased might have contributed Rs. 2,250/- for his family members. The age of the deceased at the time of accident was 20 years and multiplier '18' is applicable. Hence, the loss of income is calculated as Rs.4,86,000/- (Rs.2,250/- X 12 X 18 = Rs.4,86,000/-).



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WEB COPY 10. The Tribunal has awarded a sum of Rs.50,000/- towards loss of love and affection for both the claimants (Each Rs.25,000/-) and Rs.5,000/- towards funeral expenses, which are all reasonable. The claimants are entitled to Rs.4,000/- towards transport expenses.

11. Total compensation is calculated as follows:-

Loss of income	:	Rs.4,86,000/-
Loss of love and affection	:	Rs. 50,000/-
Funeral expenses	:	Rs. 5,000/-
Transport expenses	:	Rs. 4,000/-
Total compensation	:	Rs.5,45,000/-
		

12. Hence, it is decided that the claimants are entitled to Rs.5,45,000/- as compensation.

13. It is seen that the Tribunal awarded compensation with 9% p.a interest, which is excessive and the same is reduced to 7.5% pa.



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14. This appeal is partly allowed. The compensation is reduced from Rs.6,31,000/- to Rs.5,45,000/-.

(i) The claimants are entitled to Rs.5,45,000/- as compensation.

(ii) The father of the deceased - first respondent herein is entitled to Rs.2,45,000/- with proportionate interest. The mother of the deceased - second respondent herein is entitled to Rs.3,00,000/- with proportionate interest and costs.

(ii) The Corporation is directed to deposit the entire compensation of Rs.5,45,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim 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 order.

(iii) On such deposit being made by the Corporation, the respondents / claimants are permitted to withdraw their shares as apportioned by this Court with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimants are not entitled for interest for the default period, if there is any. No Costs. **Excess amount, if any, shall be refunded to the Corporation.**

28.11.2022

Index : Yes/No
Internet : Yes/No
Ls



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R. THARANI, J.

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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 Accident Claims Tribunal -
Special Sub Court,
Tirunelveli

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

Pre-delivery Judgment made in
C.M.A.(MD)No.1083 of 2009

28.11.2022