



C.M.A.(MD)No.1411 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.11.2022

Delivered On : 19.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1411 of 2012

The Oriental Insurance Company Limited.,
through its Branch Manager,
No.1548, Tenkasi Road,
Rajapalayam,
Virudhunagar District.

.. Appellant /2nd Respondent

Vs.

1.Maheswari
2.Minor. Ilakiya
3.Minor. Priyadarshini
4.Jairenga Transport Corporation,
Muthungaiyar Road,
No.367,368, Rajapalayam,
Virudhunagar District.
(R4 remained exparte before
the lower Court)

... Respondents 1 to 3 / Petitioners

... 4th Respondent / 1st Respondent



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award, dated 30.04.2012, made in M.C.O.P.No.862 of 2009, on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Judge – Fast Track Court, Dindigul.

For Appellant : Mr.E.Chandrasekaran
For Respondents : Mr.C.K.M.Appaji for R1
: R2 & R3-
: No appearance for R4

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 30.04.2012, made in M.C.O.P.No.862 of 2009, on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Judge – Fast Track Court, Dindigul. The appellant herein is the second respondent, the respondents 1 to 3 herein are the claimants and the fourth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.862 of 2009, is as follows:

On 26.08.2009, the deceased- Muthamil rajan was working as a driver in an ambulance bearing Registration No.TN-57-G-1058, the deceased and his friend-



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Ravi @ Ravikumar and Sahayam were transporting a lady, who consumed poison, admitted her for treatment in the Government Dindigul hospital and when they were returning to Kodaikanal along the Dindigul - Vathlakundu main road, near Veerachikkampatti diversion, a lorry bearing Registration No.TN-67-Z-2805 driven by its driver in a rash and negligent manner, dashed against the ambulance and the deceased died on the spot. The deceased was aged about 39 years and he was earning Rs.13,535/- as a driver in the Government ambulance. The petitioners are his dependants and they claimed a sum of Rs.35,00,000/- as compensation.

3. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.862 of 2009, is as follows:

It was the deceased, who drove the vehicle in a rash and negligent manner and dashed against the lorry. The Tamil Nadu Government, who is the owner of the ambulance, is to be impleaded as a necessary party. The claim is excessive.

4. The passenger in the ambulance, by name, Ravi@ Ravikumar sustained injuries in the accident and he filed a petition in M.C.O.P.No.430 of 2010. Since both the claims were arise out of the same accident, a joint trial was conducted and a common judgment was pronounced by the Tribunal.



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5. In the joint trial, 4 witnesses were examined and 11 documents were marked, on the side of the claimants. 1 witness was examined and 1 document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.21,94,000/- as compensation.

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

The Tribunal failed to note that the deceased was a Government servant, but, the service register was not marked as a document. In the post mortem certificate the age of the deceased was mentioned as 35 years, but, in the death certificate, it was mentioned as 39 years. The exact date of birth was not proved. Neither the birth certificate nor the school certificate were marked. The deceased is liable for contributory negligence. When two vehicles involved in an accident, contributory negligence is to be fixed. The award is excessive.

7. On the side of the appellant, it is stated that R.W.1 has deposed that it was the ambulance that came in a negligent and zig-zag manner and that R.W.1 sustained fracture in his hand and that P.W.1 was not an eye witness.



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8. On the side of the respondent - claimant, it is stated that P.W.1 is an eye witness. Contributory negligence was not proved on the side of the appellant. The claimants proved the negligence through the evidence of P.W.1 and through Ex.P1. R.W.1 has admitted that charge sheet was filed against him and a criminal case is pending against him. The allegation against the deceased in the evidence of R.W.1 cannot be given any weightage, since R.W.1 is an interested witness.

9. On the side of the appellant, it is stated that pendency of the criminal case need not be given weightage by the Tribunal.

10. P.W.1 travelled in the ambulance and he also sustained injuries in the accident, he has also filed a claim petition in M.C.O.P.No.430 of 2010 before the Tribunal and only a common judgment was passed in both the claim petitions. Hence, it is decided that P.W.1 is an eye witness. R.W.1 is an interested witness, he is the driver of the lorry and his evidence cannot be given much weightage. In Ex.P1-copy of the F.I.R, lorry driver was mentioned as an accused. R.W.1 has admitted that the charge sheet was filed against him and the criminal case is pending against him. In the above circumstances, it is decided that the accident has taken place due to the rash and negligent driving of the lorry driver.



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11. On the side of the appellant, it is stated that the age of the deceased was 39 years and multiplier '15' is applicable, but, the Tribunal is wrong in fixing multiplier '16'.

12. It is seen that in Ex.P4-post mortem report, the age of the deceased was mentioned as 35 years. Death certificate was marked as Ex.P5 and as per Ex.P5, the age of the deceased was mentioned as 39 years. In the claim petition, the age was mentioned as 39 years. Hence, it is decided that the age of the deceased, at the time of accident, was 39 years. Hence, multiplier '15' is applicable.

13. There is no dispute regarding the monthly income of the deceased. The salary certificate was marked as Ex.P10. The last pay received by the deceased is Rs.14,023/-. Since the deceased was working as a Government driver 50% (Rs.7,012/-) future prospects is to be added and the monthly income is calculated as Rs.21,035/-. After deducting 20% (Rs.4,207) towards income tax, the Tribunal fixed the monthly income as Rs.16,828/-, which is reasonable. After deducting 1/3rd (Rs.5,609/-) for his own expenses, the deceased might have contributed Rs.11,219/- for his family members. After applying multiplier '15', the income of the deceased is calculated as Rs.20,19,420/- (Rs.11,219/- X 12 X 15 = Rs.20,19,420/-).



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14. The Tribunal has awarded Rs.10,000/- towards loss of consortium, Rs.20,000/- towards loss of love and affection, Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of damage to articles, which are all reasonable.

15. The total compensation is calculated as follows:-

Loss of income	:	Rs. 20,19,420/-
Loss of consortium	:	Rs. 10,000/-
Loss of love and affection	:	Rs. 20,000/-
Loss of damage to articles	:	Rs. 5,000/-
Funeral expenses	:	Rs. 5,000/-
Total compensation	:	 Rs.20,59,420/-

16. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from **Rs.21,94,000/- to Rs.20,59,420/-**. The first claimant, who is the wife of the deceased, is entitled to Rs.10,59,420/- with proportionate interest and costs, The second and third claimants, who are the daughters of the deceased, is entitled to Rs.5,00,000/- each with proportionate interest.



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(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.20,59,420/- (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. Excess amount, if any, shall be refunded to the appellant / Insurance Company.

(iii) On such deposit being made by the appellant / Insurance Company, the first respondent herein / major claimant is permitted to withdraw her share amount as apportioned by this Court with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by her. The Tribunal is directed to deposit the share of the minor claimants / respondents 2 and 3 herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent herein, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The claimants are not entitled for interest for the default period, if there is any.

19.12.2022

Index : Yes/No
Internet : Yes/No
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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 Additional District and Sessions Judge

Motor Accident Claims Tribunal –

Fast Track Court, Dindigul.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.1411 of 2012

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