



C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.10.2022

Pronounced on : 16.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.1217 of 2013

and

Cros.Obj(MD)No.10 of 2015

C.M.A(MD)No.1217 of 2013

The Oriental Insurance Company Limited,
represented through its Divisional Manager,
K.J.R.Complex,
No.15, North Veli Street,
Madurai-1.

...Appellant / 2nd respondent

Vs

1.Balamani

2.Satheesh Raja

3.Preethi Meena

... 1 to 3 respondents / 1 to 3 petitioners

R3 declared as major and guardianship
discharged vide Court order dated
26.08.2014)

4.G.Muthuramalingam

...4th respondent / 1st respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the Award of Rs.15,53,000/- (Rupees Fifteen



C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

Lakhs Fifty Three Thousand only) passed in M.C.O.P.No.196 of 2009 dated 02.03.2013 on the file of the Motor Accidents Claims Tribunal cum VI Additional District Judge, Madurai.

For Appellant : Mr.E.Chandrasekaran
For R1 to R3 : Mr.D.Rajkumar
For R4 : No appearance

Cros.Obj(MD)No.10 of 2015

1.Balamani
2.Satheesh Raja
3.Preethi Meena ... Petitioners / Cross Objectors

Vs

1.The Oriental Insurance Company Limited,
represented through its Divisional Manager,
K.J.R.Complex, No.15, North Veli Street,
Madurai-1.
2.G.Muthuramalingam ... Respondents

PRAYER :-

This Cross Objection is filed under Section 41 Rule 22 of Civil Procedure Code, against the Award dated 02.03.2013 made in M.C.O.P.No. 196 of 2009 on the file of MACT cum VI Additional District Judge, Madurai.

For Petitioners : Mr.D.Rajkumar
For R1 to R3 : Mr.E.Chandrasekaran
For R2 : No appearance



C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

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JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.196 of 2009 on the file of the Motor Accident Claims Tribunal / VI Additional District Judge, Madurai. The appellant is the second respondent, respondents 1 to 3 are the claimants 1 to 3. 4th respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 09.08.2008 at about 4.30 pm, when the deceased Paramasivan was riding his motorcycle bearing registration number TN 58 K 5968 along the Madurai to Theni main road, near Sakkarappatti village, the deceased overtook a lorry bearing registration number TCE 9709, after giving due signal and after getting free passage from the lorry driver. But the lorry driver, who drove the vehicle in a rash and negligent manner, hit against the deceased and the rear wheel of the lorry run over the deceased and he died on the spot. The deceased was working as a record clerk in the Special Court for CBI cases, Madurai and was drawing a sum of Rs.8658/- as salary. The petitioners are his dependents and they claim a sum of Rs.15,00,000/- as compensation. The first respondent remained ex-parte.



C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

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3. Brief substance of the counter filed by the second respondent is as follows:

The respondent lorry driver drove the vehicle in a moderate speed. The deceased who did not possess a valid driving license, drove the motorcycle in a rash and negligent manner without observing the traffic rules and attempted to overtake the lorry. He lost his control and dashed against the rear portion of the lorry, fell inside the lorry and invited the accident. The accident took place only due to the negligence of the deceased himself. The first respondent is not responsible for the accident and hence the second respondent is also not liable to pay compensation. The claim is excessive.

4. Three(3) witnesses were examined and seven(7) documents were marked on the side of the petitioner. Three(3) witnesses were examined and six(6) documents were marked on the side of the respondent. The Tribunal awarded Rs.15,53,000/- as compensation.

5. Against that order, the second respondent preferred this appeal on the following grounds:

The Tribunal failed to note that the lorry driver drove the lorry in a



C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

moderate speed and it was the deceased who was rash and negligent in attempting to overtake the lorry. When two vehicles involved in the accident, the Tribunal ought to have fixed the negligence at the ratio of 50% each. The award is excessive. The deceased was not having valid driving licence and contributory negligence ought to have been fixed against the deceased. It was the deceased who rode the two wheeler in a rash and negligent manner and when he tried to overtake the lorry, he fell inside the lorry and invited the accident.

6.Brief substance of the cross objection is as follows:

The Tribunal ought to have awarded Rs.20 Lakhs as compensation. The Tribunal ought to have awarded Rs.1 Lakh towards loss of consortium and Rs.25,000/- towards funeral expenses. The Tribunal is wrong in deducting 1/3 of the income towards own expenses. The Tribunal ought to have awarded 12% interest for the compensation awarded.

7.On the side of the appellant, Ex.R4- a judgment of the Criminal Court was marked to prove that the lorry driver was acquitted of the charges.



C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

8. A judgment of a Criminal Court is not binding on the Tribunal and on the basis of evidence of P.W.2 and P.W.3, the Tribunal has fixed responsibility on the lorry driver. Ex.R1, Ex.R2 and Ex.R4 are not sufficient enough to prove that the lorry driver was not responsible for the accident. The evidence of R.W.2 and Ex.R3 are insufficient to prove that the deceased was not having a valid driving licence. In the above circumstances, it is decided that the liability fixed by the Tribunal is reasonable.

9.The salary certificate of the deceased was marked as Ex.P4. In Ex.P4, the monthly salary is mentioned as Rs.10,857/-. The salary of the deceased stated in the petition is Rs.8658/- per month. The Tribunal has fixed the monthly income as Rs.10,857/-. The age of the deceased is mentioned as 44 years in the claim petition. Ex.P6 is the photocopy of the service register of the individual. The date of birth of the deceased as per the Service Register, is 22.03.1962 and the accident has occurred in the year 2008. Hence, the age of the deceased, at the time of accident, is fixed as 46 years. Multiplier 13 is applicable.

10.Considering the possibilities of promotion and raise in the salary, the monthly income is fixed at Rs.12,000/-. After deducting 1/3 for his own



C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

expenses, the deceased might have contributed Rs.8,000/-[12,000 – 4000(12000/3)] to his family members. Multiplier 13 is applicable. By applying multiplier 13, the loss of income is calculated as Rs.12,48,000/- (8000 x 13 x 12).

11.The Tribunal has awarded Rs.60,000/- towards loss of love and affection, Rs.20,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses, which are all reasonable.

Loss of Income	-	Rs.12,48,000/-
Loss of love and affection	-	Rs. 60,000/-
Loss of consortium	-	Rs. 20,000/-
Funeral expenses	-	Rs. 5,000/-

Total	-	Rs.13,23,000/-

12.Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.15,53,000/- to **Rs.13,23,000/- (Rupees Thirteen Lakhs Twenty Three Thousand only)** which shall carry interest at the rate of 7.5% per annum.



C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

(ii) The appellant /Insurance company, is directed to deposit the entire compensation of Rs.13,23,000/- (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 proportionate costs to the credit of M.C.O.P.No.196 of 2009 on the file of the Motor Accidents Claims Tribunal cum VI Additional District Judge, Madurai, 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 appellant /insurance company, the first respondent / 1st claimant is permitted to withdraw a sum of Rs. 7,23,000/- (Rupees Seven Lakhs Twenty Three Thousand only) and the second and third respondents/ second and third claimants are permitted to withdraw a sum of Rs.3,00,000/- (Rupees Three Lakhs only) **each**, along with proportionate interest as apportioned by the Tribunal. Consequently, the Cross Objection is dismissed.

16.12.2022

Index: Yes / No
Internet : Yes / No

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8 / 10



C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

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To

- 1.The Motor Accidents Claims Tribunal cum VI Additional District Judge,
Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.1217 of 2013 and Cros.Obj(MD)No.10 of 2015

R. THARANI, J

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Pre-Delivery Judgment
made in
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