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C.M.A(MD)No.624 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.11.2022

Pronounced on : 25.11.2022

CORAM

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

C.M.A(MD)No.624 of 2008

Manager,
New India Assurance Co.Ltd.,
K.V.R.Complex, III Floor,
80 feet Road, Karur.

...Appellant/ 2nd respondent

Vs

1.Muniammal

2.Sri Manju

3.Susmitha

4.Saritha

5.Amarsith

... 1 to 5 respondents / Petitioners

6.Palaniammal

R6 is dispensed with vide Court
order dated 20.092022

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order passed in M.C.O.P.No.296 of 2003 on the file of the Motor Accident Claims Tribunal(District Court), Karur and to dismiss the claim.



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For Appellant : Mr.B.Vijay Karthikeyan

For Respondent : Mr.K.Suresh Kumar for R.1 to R.5

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.296 of 2003 on the file of the Motor Accident Claims Tribunal(District Court), Karur. The appellant herein is the second respondent. Respondents 1 to 5 are the claimants. The sixth respondent is the third respondent in the claim petition.

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

On 02.12.2002, at about 1.30 p.m, when the deceased Vaiyapuri was travelling in a TVS 50 two wheeler bearing registration number TN 47 E 3831, keeping the extreme left of the road, a car bearing registration number TNB 5511 was driven by its driver in a rash and negligent manner, dashed against the deceased. The deceased sustained injuries and died on the spot. The deceased was aged about 45 years at the time of accident. He was working as a Security in the Eswaran Temple, Karur and was earning a sum of Rs.1,500/- per month. The petitioners are his dependants. They claim a sum of Rs.1,00,000/- as compensation.



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

The manner of accident is wrongly narrated in the petition. It is wrong to state that the accident has taken place due to the rash and negligent driving of the car driver. The age, profession and income of the deceased are all denied. The vehicle bearing registration number TNB 5511 was not at all involved in the occurrence. The second respondent is not liable to pay compensation.

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

The vehicle was not at all involved in the accident. The first respondent has denied the involvement of the vehicle. One Kandhasamy, who was alleged to have driven the vehicle at the time of accident, was not at all known to the first respondent. Only to claim compensation the vehicle was put up in this case.

5. Three witnesses were examined and five documents were marked on the side of the petitioner. Two witnesses were examined and eight documents



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were marked on the side of the respondent. The Tribunal awarded a sum of Rs.1,17,600/- as compensation.

6. Against the award, the appellant preferred this appeal on the following grounds:

The Tribunal failed to consider that in Ex.P1-First Information Report, it is stated that the accident has happened due to some unknown vehicle. The Tribunal failed to consider that the initial burden of proving the involvement of the vehicle, was with the claimants and that the claimants have miserably failed to prove the same. The Tribunal failed to consider that there was no evidence as to how the car that caused the accident, was identified. The Tribunal failed to consider that there is contradiction in the evidence of P.W.2 before the Tribunal and before the police under Section 161(3) of Cr.P.C. There is a legal bar to use the statement under Section 161(3) of Cr.P.C., in criminal proceedings and not in the civil proceedings. The Tribunal has failed to appreciate that the case lodged against the driver/accused abates due to his death. The Tribunal is wrong in drawing adverse inference merely because the proof of complaint lodged with CBCID was not produced. The Tribunal failed to consider that the complaint to CBCID was lodged on 04.05.2005 and that the investigation is still pending.



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7. On the side of the appellant it is stated that this case is a hit and run case. Wherein, the deceased died on the spot. P.W.1, the wife of the deceased has given evidence. In the First Information Report, it is stated that the deceased was hit by some unknown vehicle. Only subsequently, the vehicle was fixed by the police. P.W.2 was not an eye witness. Even in the charge sheet, he was not mentioned as an eye witness and his evidence is not reliable.

8. It is seen that the driver of the car died during the course of trial and the criminal case was closed as abated. Ex.R8 is the report of the same. R.W.1 was not an eye witness. On the side of the appellant, Ex.R2 to R8 were marked. All the documents are statements recorded by the police under Section 161(3) of Cr.P.C. The appellant has not chosen to examine the witness mentioned in the documents. The private investigation report was marked as Ex.P1. It is stated that a complaint was lodged by the police before the CBCID police. No document was filed to prove that a complaint was lodged before the CBCID police, and what happened to the complaint was not brought on record. Hence it is decided that the appellant has not proved that the vehicle was not involved in the accident. Considering the evidence on the



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part of the claimant, it is decided that the accident has occurred due to the rash and negligent driving of the car driver.

9.No serious objection was raised by the appellant, with regard to the quantum fixed by the Tribunal. Hence it is decided that the quantum fixed by the Tribunal is reasonable. For the reasons stated above it is decided that there is no sufficient enough grounds to interfere with the orders of the Tribunal.

10.In the above circumstances, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs. 1,17,600/- (Rupees One Lakh Seventeen Thousand Six Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant / insurance company is directed to deposit the entire compensation of Rs.1,17,600/- (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.296 of 2003 on the file of the Motor Accident Claims Tribunal(District Court), Karur, within



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a period of eight weeks from the date of receipt of a copy of this order and permitted to collect the same from the owner of the vehicle.

(iii) On such deposit being made by the appellant / insurance company, the respondents 1 to 5 herein/ claimants are permitted to withdraw equal share in the award amount of Rs.1,17,600/- (Rupees One Lakh Seventeen Thousand Six Hundred only) with proportionate interest.

25.11.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal(District Court), Karur.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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