



C.M.A.(MD)No.1547 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 27.06.2022

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

C.M.A.(MD)No.1547 of 2011

and

M.P.(MD)No.1 of 2011

The Branch Manager,
M/s. United India Insurance Co.Ltd.,
North Car Street,
Ambasamudram.

... Appellant

Vs.

1.Paldurai
2.Sivamani
3.Vasanth
4.A.Chellammal

... Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2011 made in M.C.O.P.No.19 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Ambasamudram.

For Appellant : Mr.B.Rajesh Saravanan
For Respondents 1 and 2 : No appearance

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JUDGMENT

This Civil Miscellaneous Appeals is filed against the order in M.C.O.P.No.19 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Ambasamudram dated 22.07.2011. Appellant is the second respondent. The first respondent herein is the claimant. Respondents 2, 3 and 4 herein are the respondents 1,3 and 4 in the claim petition.

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

On 13.10.2007 when the deceased Throupathy was standing near the Ambasamudram Pabanasam Road, a two wheeler bearing registration number TN 76 5621 driven by the son of the first respondent in a rash and negligent manner dashed against the deceased. The deceased sustained injuries and then she died on 18.11.2007. The petitioners are the dependents of the deceased. They claim Rs.2 Lakhs as compensation.

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

The age, income and avocation of the deceased are denied. The



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deceased was aged about 70 years. The petitioners are not his dependants. The respondents 3 and 4 are married daughters. They are not entitled to get compensation. The rider of motorcycle was not added as a party. The petition is bad for non joinder of necessary parties. The claim is excessive.

4.Two witnesses were examined and 7 documents were marked on the side of the petitioner. One witness was examined and one document was marked on the side of the respondent. One document was marked as Court document. The Tribunal awarded a sum of Rs.1,10,000/- as compensation.

5.The appellant filed this appeal on the following grounds:

The rider of the two wheeler was not having valid driving license. The deceased died not due to the injury sustained by her in the accident. Considering the age of the deceased, the notional income fixed by the Tribunal is excessive. The deceased was negligent and has invited the accident. The Tribunal has ordered pay and recovery. The Tribunal wrongly held that the appellant has to pay compensation to the claimants and then to recover the same from the owner of the vehicle.



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6. On verification of the records, it is seen that the case against the respondents 3 and 4 was given up by the appellants. Respondents 3 and 4 are the claimants. The first respondent is the owner of the vehicle. This Court has raised an issue as to the maintainability of the case when the appeal against respondents 3 and 4 was given up by the appellant. The matter was adjourned to 21.06.2022 for clarification regarding the maintainability. On 21.06.2022, the learned counsel for the appellant was not ready for giving any clarification regarding the maintainability, hence the matter was again posted to 27.06.2022.

7. When the matter was taken up today (27.06.2022), the learned counsel for the appellant was not ready for giving any clarification regarding maintainability of the appeal. There is no dispute regarding the validity of the insurance policy. The policy was valid at the time of accident. The Tribunal has come to the conclusion that the driver of the two wheeler was not having driving license and has passed the award with a direction to pay and recovery. The appellant has not chosen to examine any witness, to prove that the rider of the two wheeler was not having driving license. No ground of appeal was raised by the appellant questioning the liability or the award amount.



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8.In view of the same, it is decided that there is no reason sufficient enough to interfere with the order of the Tribunal and hence the award is confirmed and this Civil Miscellaneous Appeal is dismissed.

9.The appellant – Insurance Company is directed to deposit the compensation awarded by the Tribunal, i.e., Rs.1,10,000/- together with interest at the rate of 7.5% per annum (if not already deposited) M.C.O.P.No.19 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Ambasamudram, within a period of eight weeks from the date of receipt of a copy of this order and then recover the same from the second respondent/ owner of the motorcycle in the manner known to law. On such deposit being made by the appellant, the first respondent/claimant is permitted to withdraw the same, in the manner known to law. If, the appellant/Insurance Company had already deposited the compensation awarded by the Tribunal to the credit of the said MCOP, then, the first respondent is at liberty to withdraw the balance amount after following due process of law. No costs. Consequently, connected miscellaneous petition is closed.

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To

- 1.The Motor Accident Claims Tribunal (Sub Court), Ambasamudram.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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