



C.M.A.(MD)No.590 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 12.10.2022

Delivered On : 03.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.590 of 2012

National Insurance Co Ltd

Kumbakonam,

Rep.By its Branch Manager,

Off.T.S.A.Big Street, Kumbakonam.

.. Appellant /2nd Respondent

Vs.

1.Vijaya

2.Minor.A.Gurumurthy

3.Minor.A.Nethaji

4.Minor.A.Bharathi

(Minor Respondents 2 to 4 are Rep.by
their Mother & Friend R1-Vijaya)

5.Anjammal (Died)

... Respondents 1 to 5 / Petitioners

6.Chinnappa

... 6th Respondent / 1st Respondent

7.S.P. Murugesan

8.Gangadaran

9.Meena

Respondents 7 to 9 are brought on record as
LRs of the deceased R5, vide Court order
dated 30.06.2022, in CMP(MD)No.5360/2018

... Respondents 7to9/LRs of R5



C.M.A.(MD)No.590 of 2012

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 25.07.2011, made in M.C.O.P.No.120 of 2008, on the file of the Motor Accident Claims Tribunal- Additional Sub Court, Kumbakonam.

For Appellant	: Mr.S.Srinivasa Raghavan
For Respondents	: Mr.K.M.Karunakaran for R1 to R4
	: Mr.R.Janarthanan for R7 to R9
	: No appearance for R6
	: R5-Died

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 25.07.2011, made in M.C.O.P.No.120 of 2008, on the file of the Motor Accident Claims Tribunal- Additional Sub Court, Kumbakonam. The appellant herein is the second respondent, the respondents 1 to 5 herein are the claimants and the sixth respondent herein is the first respondent in the original M.C.O.P. Petition. The respondents 7 to 9 herein were impleaded as LR's of the deceased fifth respondent / fifth claimant.

2. A brief substance of the claim petition, in M.C.O.P.No.120 of 2008, is as follows:



C.M.A.(MD)No.590 of 2012

On 25.05.2007, when the deceased-Anbalagan was riding a motorcycle bearing Registration No.TN-49-R-6445, all of a sudden, the side stand get lowered and the motorcycle capsized. The deceased sustained injuries and he took treatment in Kumbakonam Government Hospital, then, he was taken to Thanjavur Medical College Hospital. On 26.05.2007, he succumbed to the injuries. He was doing agricultural work and was earning Rs.6,000/- per month. The petitioners are his dependents and they claimed a sum of Rs.10,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.120 of 2008, is as follows:

The age, profession and income are all denied. The place of occurrence, mode of occurrence are all denied. The accident took place only due to the negligence of the deceased himself. The deceased in a drunken mood, without removing the side stand, was riding the two wheeler and he invited the accident. The deceased was not having a valid driving licence. This respondent is not liable to pay compensation.

4.The first respondent was set as exparte. On the side of the claimants, 2 witnesses were examined and 4 documents were marked. On the side of the second respondent, 3 witnesses were examined and 3 documents were marked. After



C.M.A.(MD)No.590 of 2012

considering both sides, the Tribunal calculated the compensation as Rs.4,30,000/- and after deducting 25% towards his own negligence, the Tribunal has awarded a sum of Rs.3,22,500/- as compensation to be paid by the second respondent on behalf of the first respondent.

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

The Tribunal failed to consider that the accident has taken place only due to the own negligence of the deceased. The deceased himself was the tort feaser. The deceased borrowed the vehicle from another person and thus, he stepped into the shoes of the owner of the vehicle. The deceased could not be named as a third party. The drunkenness of the deceased and the absence of driving licence clearly proved that the deceased was the tort feaser. The quantum fixed by the Tribunal is excessive and arbitrary.

6. On the side of the appellant, it is stated that the claim petition was filed both the Sections 163 and 166 of Motor Vehicles Act. The respondent has to select only one Section. Under Section 163A, a maximum sum of Rs.5,00,000/- can be awarded. Under Section 163A, the claimants need not prove the negligence, whereas, under Section 166 negligence ought to have been proved by the claimants.



C.M.A.(MD)No.590 of 2012

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7. On the side of the respondents, it is stated that the respondents / claimants restricted the claim under Section 163A of M.V.Act alone and a memo to that effect was filed.

8. It is seen that under Section 163A, there is no necessity for the claimants to prove the negligence. The Tribunal has already fixed 25% contributory negligence. Under Section 163A of the Motor Vehicles Act and the maximum award amount is Rs.5,00,000/-. The Tribunal has awarded only Rs.3,22,500/-. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the Tribunal.

9. The Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is hereby confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.3,22,500/- (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.



C.M.A.(MD)No.590 of 2012

(iii) On such deposit being made, the Tribunal may permit the major claimants to withdraw their shares as apportioned by the Tribunal with interest and costs on filing proper petition before the Tribunal, less any amount, if already withdrawn by them. The Tribunal is directed to deposit the share of the minor claimants / respondents 2 to 4 herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first appellant, 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.

.....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.



C.M.A.(MD)No.590 of 2012

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- To
- 1.The Additional Sub Judge,
Motor Accident Claims Tribunal -
Kumbakonam.
 - 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.590 of 2012

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.590 of 2012

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