



C.M.A.(MD)No.798 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 20.10.2022

Delivered On : 24.11.2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.798 of 2012

The Branch Manager

National Insurance Company Limited,

East Main Road, Pudukkottai.

... Appellant /2nd Respondent

Vs.

1.Chinnammal

2.Ponnaiah

3.Raja Jothi

4.Raja Lakshmi

... Respondents 1 to 4 / Petitioners

5. Nagarajan

(Notice to the R5 may be dispensed with

since he Remained exparte

before the Tribunal)

... 5th Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 17.02.2011, made in M.C.O.P.No.109 of 2009, on the file of the Motor Accident Claims Tribunal-Additional District and Sessions Judge (Fast Track Court), Pudukkottai.

For Appellant : Mr.J.S.Murali

For Respondents : No appearance



C.M.A.(MD)No.798 of 2012

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 17.02.2011, made in M.C.O.P.No.109 of 2009, on the file of the Motor Accident Claims Tribunal- Additional District and Sessions Judge (Fast Track Court), Pudukkottai. The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.109 of 2009, is as follows:

On 08.02.2003, at about 10.30 pm., when the deceased-Raja was walking along the Trichy-Madurai road, near Viralimalai, a mini lorry bearing Registration No.TN-55-C-0723 driven by its driver in a rash and negligent manner, overtaking a lorry, dashed against the deceased and caused his death on the spot. The deceased was aged about 24 years and was working as Machinist and was earning Rs.5,000/- per month in a private company. The petitioners are his dependants and they claimed a sum of Rs.27,00,000/- as compensation.



C.M.A.(MD)No.798 of 2012

3. Brief substance of the counter filed by the second respondent, in

WEB M.C.O.P.No.109 of 2009, is as follows:

The manner of the accident is denied. The registration number of the vehicle was not mentioned in the F.I.R. The complainant was the Village Administrative Officer and he was not an eye witness. He was informed by one Vijayasankar, who was a co-worker of the deceased. The occurrence was alleged to have been taken place on 08.02.2003, but the vehicle was inspected by the Motor vehicle inspector only on 04.03.2003. There was no damage to the vehicle. The vehicle was not at all involved in the accident. A pure hit and run case was altered into the present case. The age, income, profession are to be proved. The claim is excessive.

4. On the side of the claimant, 2 witnesses were examined and 5 documents were marked. On the side of the respondents, 2 witness were examined and no document was marked. After considering both sides, the Tribunal has awarded a sum of Rs.4,20,000/- as compensation to the claimants to be paid by the second respondent.

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



C.M.A.(MD)No.798 of 2012

The Tribunal has failed to consider that this is a bogus claim and the insured vehicle was not at all involved in the accident. Though the co-worker- Vijayasankar was said to have witnessed the accident, he has not chosen to lodge the complaint. Only the Village Administrative Officer has filed the complaint. In Ex.P1-F.I.R, there was no description of the vehicle. The village administrative officer was not examined as a witness before the Tribunal. P.W.2 is a co-worker of the deceased and he is an interested witness and that he was not cited as an eye witness in the charge sheet. The Tribunal is wrong in fixing the monthly income as Rs.5,000/- and in awarding Rs.50,000/- towards loss of love and affection. The Tribunal is wrong in deducting 1/4th of the income instead of 50% of the income towards the own expenses of the deceased.

6. On the side of the appellant, it is stated that the vehicle was not at all involved in the accident. A co-worker was examined as P.W.2, but, he was not the complainant and his evidence is not trustworthy, as P.W.2 is an interested witness. No particulars regarding the vehicle was mentioned in the F.I.R and that the case is only a hit and run case.



C.M.A.(MD)No.798 of 2012

WEB COPY

7. Though name of the respondents were printed, there was no representation on the side of the respondents. Hence, no oral argument on the side of the respondents is recorded.

8. Ex.P1 was the copy of the F.I.R. Ex.P4 was the copy of the charge sheet. P.W.2 was examined as the eye witness. Ex.P3 - MVI report reveals the involvement of the vehicle and the same was supported by the evidence of P.W.2 and corroborated by the charge sheet-Ex.P4. In view of the same, it is decided that the vehicle insured with the appellant was involved in the accident. The complaint was given only by the Village Administrative Officer and non-mentioning of the number of the vehicle by the Village Administrative Officer cannot be taken as adverse against the claimants. There is no dispute regarding the validity of the insurance policy.

9. On the side of the appellant, it is stated that the Tribunal fixed the monthly income as Rs.5,000/-, which is excessive. It is stated that without any proof of income, the Tribunal has fixed the monthly income. Considering the date of accident, it is decided that the notional income and the compensation fixed by the Tribunal is reasonable.



C.M.A.(MD)No.798 of 2012

WEB COPY

10. It is seen that the Tribunal has fixed the monthly income as Rs.5,000/- and deducted 1/4th of the income towards his own expenses (Rs.1,250/-) and adopted multiplier 8 and calculated the loss of income as Rs.3,60,000/-, which is reasonable. The Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.5,000/- towards loss of estate and Rs.50,000/- towards loss of love and affection and totally awarded Rs.4,20,000/- as compensation, which are all reasonable.

11. No appeal or cross objection was filed by the claimants for enhancement of compensation, hence, it is decided that the quantum fixed by the Tribunal is reasonable.

12. In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal.

13. Hence, this Appeal is dismissed. No costs. The compensation fixed by the Tribunal is hereby confirmed.



C.M.A.(MD)No.798 of 2012

(i) The appellant is directed to deposit the entire compensation of Rs.4,20,000/- (if not already deposited) together with proportionate 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.

(ii) On such deposit being made, the respondents 1 to 4 / claimants are permitted to withdraw their share amount as apportioned by the Tribunal with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

24.11.2022

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),
Pudukkottai



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C.M.A.(MD)No.798 of 2012

R. THARANI, J.

Ls

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.798 of 2012

24.11.2022