

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.10.2022

Pronounced on : 03.11.2022

CORAM

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

C.M.A(MD)No.852 of 2012

The Oriental Insurance Company Ltd.,
through its Manager,
Division Office-II,
No.16, K.J.R.Complex,
North Veli Street,
Madurai Town.

...Appellant /2nd respondent

Vs

1.S.Parameswari

2.Minor.S.Balaji

3.Minor.S.Durga

(Minors 2nd and 3rd respondents
represented by their mother and guardian,
the 1st respondent S.Parameswari)

4.C.Rajalakshmi

... 1 to 4 respondents / 1 to 4 petitioners

5.M/s.Texel Industries,
through its Proprietor,
2nd Floor, No.13, Cross Street,
C.I.T.Colony,
Chennai-600 004.

... 5th respondent / 1st respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the Award of Rs.6,60,400/- (Rupees Six Lakhs Sixty Thousand Four Hundred only) passed in M.C.O.P.No.1034 of 2007, dated 18.01.2012, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge(Fast Track Court No.2), Madurai.

For Appellant : Mr.E.Chandrasekaran
For R1 to R4 : Mr.A.L.Vijay Devaraj
For R5 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.1034 of 2007, dated 18.01.2012, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge(Fast Track Court No.2), Madurai. The appellant is the second respondent. Respondents 1 to 4 are the claimants, 5th respondent herein is the first respondent in the claim petition.

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

On 10.08.2005, when the deceased Selvamani was travelling in a car bearing registration number TN 07 AW 3006 from Tirumangalam to Virudhunagar, near Karisalpatti vilakku, the driver of the vehicle drove the vehicle in a rash and negligent manner and dashed against a Tamarind tree. The deceased sustained injuries and he succumbed to the injuries in the hospital. The deceased was aged about 46 years and was doing real estate business and was earning Rs.25,000/- per month. Petitioners are his dependents. They claim a sum of Rs.20,00,000/- as compensation.

3.Brief substance of the counter filed by the first respondent in the claim petition, is as follows:

The manner of accident is wrongly narrated. The first respondent insured the vehicle with the second respondent and the policy is valid from 13.05.2005 till 12.05.2006. Age and income of the deceased are to be proved. The claim is excessive.

4.Brief substance of the counter filed by the second respondent in the claim petition, is as follows:

The accident did not happen as narrated in the petition. The second respondent already paid a sum of Rs.2,00,000/- as compensation to the petitioner under personal accident coverage. The first respondent was careless and negligent in maintaining the car. The petitioners are to prove the manner of accident, age and income of the deceased. The claim is excessive.

5.One(1) witness was examined, eight(8) documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondents. The Tribunal awarded Rs.6,60,400/- as compensation with interest at the rate of 9% per annum, to be paid by the second respondent on behalf of the first respondent.

6.Against the award, the second respondent approached this Court by way of this appeal on the following grounds:

The claimants have to prove the rashness and negligence on the part of the driver of the vehicle. No eye witness was examined. Hence the respondents are not entitled to claim any compensation. The Tribunal failed to note that the compensation should be just and reasonable. Without any proof of income, the Tribunal has fixed the annual income as Rs.5,000/-. The

Tribunal is wrong in fixing the age on the basis of the post mortem report. The age, mentioned in the post mortem certificate is based on the information given by the attendant of the body who took the body for conducting post mortem. The Tribunal is wrong in awarding interest at the rate of 9%. The interest is exorbitant.

7.On the side of the appellant it is stated that there was no evidence to prove monthly income of the deceased and that the Tribunal has fixed the monthly income as Rs.5,000/- which is excessive.

8.On the side of the respondent it is stated that the deceased was doing grocery business, cement agency and he was doing real estate business and the income fixed by the Tribunal is very low.

9.On the side of the appellant it is stated that the grocery shop was owned only by the wife of the deceased and not by the deceased and that there is no loss of income.

10.It is seen that Ex.P7 is the copy of the letter addressed to the first claimant by the Tamil Nadu Cements Corporation Limited, Ariyalur. Ex.P6 is the copy of the certificate of registration of users of weights and measures. Ex.P6 and Ex.P7 reveals that the deceased was doing some business. The notional income at the time of accident is Rs.4,500/-. On the basis of Ex.P.6 and Ex.P.7, the Tribunal has fixed the monthly income as Rs.5,000/- which is reasonable. The claimants are four(4) in numbers, hence after deducting 1/3 for his own expenses, the deceased might have contributed to Rs.3,400/- (3333.3/- is rounded off to 3400) for his family. The age of the deceased is 46 years and multiplier 13 is applicable. The claimants are entitled to Rs.5,30,400/- (3400 x 12 x 13) towards loss of income.

11.On the side of the appellant it is stated that the Tribunal has awarded Rs.1,00,000/- towards loss of love and affection, which is excessive. On the side of the respondents it is stated that the age of the wife of the deceased is 35 years. The Tribunal has awarded Rs.25,000/- towards loss of consortium which is very low. There are minor children and an aged mother in law who are to be taken care of by the wife of the deceased and pray the award to be enhanced.

12.The Tribunal has awarded Rs.25,000/- towards loss of consortium, Rs.25,000/- for each of the claimants(totally Rs.1,00,000/-), towards loss of love and affection. The Tribunal has awarded Rs.5,000/- towards funeral expenses which are all reasonable. It is seen that the Tribunal has fixed the interest at the rate of 9% which is excessive. Hence the interest is reduced to 7.5%.

13.In the above circumstances, it is decided that there is nothing sufficient enough grounds to interfere with the order of the trial Court. Hence, this Civil Miscellaneous Appeal is liable to be dismissed.

14.Accordingly, this Civil Miscellaneous Appeal is dismissed.

(i) The quantum of compensation awarded by the Tribunal is confirmed and the appellant is directed to deposit a sum of Rs.6,60,400/- (Rupees Six Lakhs Sixty Thousand and Four Hundred only) (if not already deposited) together with interest at the rate of 7.5% per annum and proportionate costs to the credit of M.C.O.P.No.1034 of 2007, dated 18.01.2012, on the file of the

Motor Accidents Claims Tribunal cum Additional District Judge(Fast Track Court No.2), Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the appellant/ Insurance Company, the 1st respondent/ 1st claimant is permitted to withdraw a sum of Rs.2,00,000/-(Rupees Two Lakhs only), along with proportionate interest at the rate of 7.5% per annum. The fourth respondent / 4th claimant is permitted to withdraw her share of Rs.60,400/- (Rupees Sixty Thousand Four Hundred only) along with proportionate interest at the rate of 7.5% per annum.

(iii) The respondents 2 and 3/ claimants 2 and 3(minors) are entitled to Rs.2,00,000/- (Rupees Two Lakhs only) each, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the first respondent / first claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

03.11.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal cum Additional District Judge
(Fast Track Court No.2), Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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R. THARANI, J

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