



C.M.A.(MD)No.866 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 19.09.2022

Delivered On : 30.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.866 of 2013
and M.P.(MD)No.3 of 2013

National Insurance Company Limited,
Rep Through its General Manager,
No.3, Middleton Street, Post Box No. 9229,
Kolkatta. .. Appellant /2nd Respondent

Vs.

1 .G. Rajeswari
2.G. Sudha ... Respondents 1&2 / Claimants
3.C. Pushparaj
4.Muthammal ... Respondent 3&4 / Respondents 1 &3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.7 of 2010, dated 19.07.2011, on the file of the Motor Accident Claims Tribunal - Sub Court, Ambasamudram.

For Appellant : Mr.D.Sivaraman
For Respondents : Mr.S.Palanivelayutham for R1 and R2
: Mr.H.Arumugam for R3
: No appearance for R4



WEB COPY



C.M.A.(MD)No.866 of 2013

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, made in M.C.O.P.No.7 of 2010, dated 19.07.2011, on the file of the Motor Accident Claims Tribunal - Sub Court, Ambasamudram. The appellant herein is the second respondent, the respondents 1 and 2 herein are the claimants and the respondents 3 and 4 herein are the respondents 1 and 3 in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.7 of 2010, is as follows:

On 23.03.2009, when the deceased - Ganapathy was travelling as a pillion rider in a two wheeler bearing Registration No.TN-76-3274 driven by one Murugan, who drove the vehicle in a rash and negligent manner and caused the accident. The deceased was doing agricultural cooli work and he was earning Rs.3,000/- per month. The petitioners are his dependents and they claimed a sum of Rs.5,00,000/- as compensation.



WEB COPY



C.M.A.(MD)No.866 of 2013

3. Brief substance of the counter filed by the respondents in M.C.O.P.No.7 of 2010, is as follows:

It was the deceased, who was negligent and he fell down from the vehicle, due to giddiness. The manner of the accident narrated in the petition is wrong. The age of the deceased was more than 65 years. Due to his age related illness and due to giddiness, he failed to hold the vehicle in the proper manner and he fell down. The accident did not take place, due to the rash and negligent driving of the rider of the vehicle. The rider of the two wheeler has not having valid driving licence. The petitioners are not the dependents of the deceased and they are having their own income and they were living separately. The claim is excessive.

4. On the side of the claimants, 2 witnesses were examined and 7 documents were marked. On the side of the respondents, 2 witnesses were examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.2,56,000/- as compensation.



C.M.A.(MD)No.866 of 2013

WEB COPY

5. Against the order, the appellant has filed this appeal on the following grounds:-

The Tribunal has failed to note that the deceased accidentally fell down, due to his old age and giddiness and that the appellant is not liable to pay compensation. The Tribunal has failed to consider that the rider of the two wheeler was not having valid driving licence. The Tribunal has failed to consider the evidence of P.W.1, wherein, she has admitted that she and the other claimants are married and are living separately and that the fourth respondent – Muthammal divorced the deceased and she is living separately for the past 20 years and that they are not the dependents of the deceased. The compensation is excessive.

6. On the side of the appellant, it is stated that the deceased accidentally fell down from the two wheeler, due to his old age and giddiness.

7. On the side of the respondents, it is stated that the rider of the vehicle was rash and negligent and hence, the deceased fell down from the vehicle and prayed the appeal to be dismissed.



C.M.A.(MD)No.866 of 2013

WEB COPY

8. F.I.R was marked as Ex.P1. Charge sheet was marked as Ex.P6. In the F.I.R and the charge sheet, the rider of the vehicle was mentioned as the accused. The rider of the two wheeler was examined as R.W.1. He has admitted that the F.I.R was registered against him. On the basis of the evidence of P.W.1 and P.W.2 and on the basis of Ex.P1 and Ex.P6, it is decided that the accident took place only due to the rash and negligent driving of the rider of the two wheeler.

9. On the side of the appellant, it is stated that the rider of the two wheeler was not having valid driving licence. No official from the R.T.O was examined as a witness. The respondent has failed to prove that the rider of the appellant was not having valid driving licence.

11. On the side of the appellant, it is stated that the claimants are not the dependents of the deceased. The first respondent and one Muthulakshmi were the daughters of the deceased and they were already married and they are not the dependents of the deceased. The fourth respondent herein-Muthammal is living separately for the past 10 years and she is not depending on the income of her husband-deceased.



C.M.A.(MD)No.866 of 2013

WEB COPY

12. It is seen that the claimants have failed to implead one Muthulakshmi, who is the daughter of the deceased-Ganapathy, since she was married. In the evidence of P.W.1, it was admitted that P.W.1 was already married. It is seen that the fourth respondent is living separately from her husband and that she is not a dependant of the deceased. No document was filed to prove that there was any legal divorce between the deceased and the fourth respondent. In the above circumstances, the decision of the Tribunal that the respondents 2 and 4 herein are entitled to claim compensation is reasonable.

13. Considering the date of accident, it is decided that the quantum fixed by the Tribunal is reasonable. There is nothing sufficient enough to interfere in the orders of the Tribunal.

14. Hence, this Appeal is dismissed and the order of the Tribunal is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

(i) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.2,56,000/- (Rupees Two Lakhs and Fifty



C.M.A.(MD)No.866 of 2013

Six Thousand only) (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.

(ii) On such deposit being made by the appellant / Insurance Company, the respondents 1, 2 and 4 herein / claimants & R3 therein 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.

30.11.2022

Index : Yes/No

Internet : Yes/No

Ls

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.



WEB COPY



C.M.A.(MD)No.866 of 2013

R. THARANI, J.

Ls

To

1.The Motor Accident Claims Tribunal -
Sub Court,
Ambasamudram.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.866 of 2013

30.11.2022