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C.M.A(MD)No.427 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.10.2022

Pronounced on : 28.11.2022

CORAM

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

C.M.A(MD)No.427 of 2020

M/s.New India Assurance Co. Ltd.,
Through its Branch Manager,
Office at No.182/22/L, S.N.High Road,
Tirunelveli.

...Appellant /2nd respondent

Vs

1.Ayrathal

2.Minor Sudali Sudha

3.Minor Valli Selvam

(R2 & R3 are represented by mother
next guardian Ayrathal)

4.Nambi Konar

... Respondents 1 to 4 /
Petitioners 1 to 4

5.Ramaiah

...5th Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the order and decree dated 27.01.2020, passed in



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MCOP No.185 of 2016 on the file of the Motor Accidents Claims Tribunal /
Special Sub Court dealing with MCOP Cases, Tirunelveli.

For Appellant : Mr.N.Dilip Kumar
For R1 to R4 : Mrs.J.Balameenakshi
For R5 : Mr.D.Saravanan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in MCOP No.185 of 2016 on the file of the Motor Accidents Claims Tribunal / Special Sub Court dealing with MCOP Cases, Tirunelveli. The appellant herein is the second respondent, respondents 1 to 4 herein are the claimants 1 to 4 and the fifth respondent herein is the first respondent in the claim petition.

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

On 10.08.2015 at about 7.15 p.m, while the deceased Palani was standing near the Sengulam Bus stop in the Tirunelveli - Nagercoil National Highways, a car bearing registration number TN 72 AK 0984 came in a rash and negligent manner, entered the mud road and knocked down the deceased. The deceased sustained injury and he was taken to TVMC Hospital,



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Palayamkottai and there he died of the injuries on the same day . The claimants are the dependants of the deceased and they claimed a sum of Rs.20 Lakhs as compensation.

3.Brief substance of the counter filed by the first respondent is as follows:

The vehicle that belong to the first respondent did not involve in any accident. The first respondent informed the fact to the second respondent and to the Head Office at Mumbai on 24.08.2015 through registered post. In the First Information Report, it was stated that a black colour Xylo car was involved in the accident where as the colour of the first respondent vehicle is green. The driver was having valid driving licence. The policy was not in force. The claim is excessive.

4.Brief substance of the counter filed by the second respondent is as follows:

The petitioner has to prove the involvement of the vehicle that belong to the first respondent. The age, occupation, income of the deceased are to be proved. The claim is excessive.



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5.Two witnesses were examined and seven documents were marked on the side of the petitioner. Four witnesses were examined and six documents were marked on the side of the respondent. The Tribunal has awarded a sum of Rs.13,30,000/- as compensation.

6.Against the award, the second respondent preferred this appeal on the following grounds:

The Tribunal failed to see that the accident is only a hit and run case. The involvement of the car that belong to the first respondent was not proved by the claimants. The witness to the accident did not identify the vehicle. The vehicle that belong to the first respondent bearing registration number TN 72 AK 0984 is Rbeige in colour. The Tribunal has given a finding that the vehicle involved in the accident was not clear. Only a not known black colour car, was mentioned in the First Information Report. One of the eye witness has stated that the colour of the car is maroon. Whereas, the insured vehicle is Rbeige in colour. The Tribunal failed to consider that the First Information Report was registered without the mentioning of the car number.



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7. On the side of the appellant, it is stated that P.W.2 has deposed that the car is black in colour. No other independent witness was examined regarding the involvement of the vehicle and that in Ex.R3 - the legal notice sent by the owner of the vehicle, it was stated that his vehicle was not involved in the accident and that P.W.2 has deposed that there was some glass pieces in the place of occurrence. Whereas no damage was mentioned in Ex.R5, R.W.3 has deposed that in the similar circumstances, there would be damages. There was no damage to the vehicle, since the insured vehicle was not involved in the accident.

8. On the side of the appellant, it is stated that P.W.2 was not an eye witness. Even as per the version of P.W.2, he was standing 50 feet away from the scene of occurrence and he was the only hearsay evidence. Without proper investigation, a charge sheet was filed against the driver of the vehicle and he is contesting the case. The driver and the owner of the vehicle filed petition to transfer of the investigation in Cr.No.232 of 2015 and they filed a petition before the Inspector General of Police. The evidence of P.W.2 is not reliable. The Tribunal failed to consider the evidence of the owner of the vehicle and the driver of the vehicle. The appellant insurance company is not



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liable to pay compensation. The Tribunal is wrong in fixing the monthly income as Rs.8000/- per month without any documents. The Tribunal is wrong in awarding Rs.13,30,000/- as compensation.

9.On the side of the appellant, it is stated that the vehicle was not mentioned in the First Information Report. The involvement of the vehicle was disputed. An official from the Regional Transport Office was examined as R.W.3. P.W.2 is not an eye witness. P.W.2 came to know about the accident only on the narration of the other people. R.W.2, the owner of the vehicle has admitted that the vehicle was not involved in the accident. From Ex.R5, it is clear that there is no damage to the vehicle. In the First Information Report, the colour of the vehicle was mentioned as black. A charge sheet was lodged against the owner of the vehicle. R.W.1 has deposed that the black colour car mentioned in the First Information Report, was not driven by him and from the MVI report, it is clear that the vehicle was not involved in any accident.

10.It is seen that R.W.3 has admitted that the driver of the vehicle was having valid driving licence. R.W.4 has deposed that the vehicle was



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identified in the course of investigation. He has further deposed that there is possibility for the complainant to mentioned a wrong colour since the accident has occurred at the night time and that the complainant was an aged person. In the First Information Report itself, the involvement of the Xylo Car was mentioned. The fact that the colour of the car was wrongly mentioned, alone is not sufficient enough to prove that the vehicle was not involved in the accident. P.W.1, P.W.2 and R.W.4 has deposed that the vehicle was a car bearing registration number TN 72 AK 0984 and the MVI Report reveals that the colour of the car is Rbeige. Hence it is decided that the vehicle Xylo Car was involved in the accident.

11.The First Information Report was registered against the driver of the Xylo Car. The evidence of P.W.1 corroborated Ex.P1. The charge sheet was filed against the driver of the car. R.W.2 has admitted that a criminal case was registered against his driver. The deceased was standing at the bus stop at the time of accident. Hence there may not be a possibility for the vehicle to get any damage. Hence it is decided that the accident has happened only due to the rash and negligent driving of the driver of the Xylo Car.



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12.The policy was in force. Since the driver of the first respondent was responsible for the accident, the owner of the vehicle, the first respondent and as the insurer, the second respondent and are liable to pay compensation.

13.On the side of the appellant it is stated that the Tribunal has fixed the monthly income of the deceased as Rs.8000/- and that no documentary evidence was let in to that effect. Considering the date of accident it is decided that the income fixed by the tribunal is reasonable. The age of the deceased was 43 years at the time of accident. The Tribunal added 25% towards future prospects. The Tribunal adopted multiplier 14. After deducting 1/4 for the personal expenses of the deceased, the Tribunal has fixed the loss of income as Rs.12,60,000/-, which is reasonable.

14.The Tribunal has awarded Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, which are all reasonable.

15.For the reasons stated above, it is decided that the vehicle involved in the accident was proved. The owner of the vehicle and the insurer are all



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liable to pay compensation. The compensation amount fixed by the Tribunal is reasonable.

16. In the above circumstances, it is decided that there is nothing sufficient enough grounds to interfere with the orders of the Tribunal.

17. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.13,30,000/- (Rupees Thirteen Lakhs Thirty Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant / insurance company on behalf of the owner of the vehicle is directed to deposit the entire compensation of Rs.13,30,000/- (if not already deposited) jointly, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of MCOP No.185 of 2016 on the file of the Motor Accidents Claims Tribunal / Special Sub Court dealing with MCOP Cases, Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the appellant / insurance company, the first respondent/ 1st claimant is entitled for a share of Rs.7,38,000/- (Seven Lakhs Thirty Eight Thousand only) the fourth respondent is entitled for a share of Rs.1,00,000/- (Rupees one lakh only) with proportionate interest and cost and they are permitted to withdraw the same on filing proper petition before the tribunal.

(iv) The second and third respondents/claimants (minors) herein are entitled to a share of Rs.2,46,000/- (Rupees Two Lakhs Forty Six Thousand only)**each** with proportionate interest, and the same is ordered to be deposited in any one of the nationalized bank until they attain majority and the first respondent/claimant is permitted to withdraw the interest alone, directly from the bank, once in three months in order to maintain the minors. Consequently, connected miscellaneous petitions are closed.

28.11.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal /
Special Court dealing with MCOP Cases,
Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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