

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of pronouncing the Judgment
07.06.2022	14.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A.[MD]No.703 of 2021

and

C.M.P.[MD]No.6432 of 2021

The Branch Manager,
United India Insurance Company Limited,
Having office at Vellakovil,
104, Rajpriya Complex,
Muthoor Road, Kankeyam Taluk,
Erode District.

: Appellant/3rd Respondent

Vs.

1.Vanitha
2.Minor Sharvini
3.Rengasamy
4.Lellavathy : Respondent Nos.1 to 4/
Claim Petitioners
5.Ravikumar : 5th Respondent/1st Respondent
6.Palanivel : 6th Respondent/2nd Respondent
[Minor 2nd Respondent represented through her natural guardian/ 1st
Respondent]

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the Judgment and Decree dated 28.10.2020 passed in M.C.O.P.No.477 of 2017 on the file of Motor Accident Claims Tribunal/Principal District Court, Dindigul.

For Appellant : Mr.I.Suthakaran
For R-1, R-3 & R-4 : Mr.K.MU.Muthu
For R-5 & R-6 : No Appearance

JUDGMENT

[Order of the Court was made by **S.ANANTHI, J.**]

This Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company, to set aside the order, dated 28.10.2020 in M.C.O.P.No.477 of 2017 passed by the learned Principal District Judge/Motor Accident Claims Tribunal, Dindigul.



2.The parties are referred to as per the rank mentioned before the Court below.

3.It is a case of fatal accident, which took place on 25.01.2017 at about 07.00 p.m., when the deceased, namely; Rajeev was travelled in a Tractor bearing Registration No.TN-49-S-9358 which belonged to the 2nd Respondent, from Mettukadai to Anjukulipatti road, towards north to south direction, near Seven Star Mango Godown. At the time, due to negligent driving of the 1st respondent/driver, the deceased Rajeev thrown away from the tractor, rear wheel of the tractor ran over the deceased. Due to the injuries sustained in the accident, he died on 26.01.2017 in Meenakshi Mission Hospital, Madurai.

4.The claimants have filed a claim petition in M.C.O.P.No.477 of 2017 on the file of the Motor Accident Claims Tribunal/Principal District Court, Dindigul, seeking compensation.

5.Before the Tribunal, on the side of the claimants Two witnesses were examined as P.W.1 & P.W.2 and marked Six documents as Exs.P.1 & P.6 and on the side of the Respondents three witnesses were examined as R.W.1 to R.W.3 and marked three documents as Ex.R.1 to Ex.R.3.

6.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the insurance company and also on appreciating the evidences on record, and directed the insurance company to pay a sum of Rs.46,70,000/- as compensation with 7.5.% per annum, and recover the same from the 2nd Respondent/owner of the vehicle. Aggrieved over the same, the Appellant/Insurance company has preferred this appeal.

7. Heard both sides. Perused the materials available on record.

8.This Civil Miscellaneous Appeal has been filed on the following two grounds:

(i). That the deceased was travelled as a passenger in the Tractor which is only a goods vehicle and hence, the Appellant/Insurance company is not liable to pay compensation.

(ii).that the notional income of the deceased fixed by the Tribunal is very high.

9.Admittedly, the deceased was travelled in the Tractor as a passenger. The said Tractor is not a passenger vehicle and it is a goods vehicle. The driver is not supposed to permit a passenger in the Tractor. So, it is violation of policy. The owner of vehicle is liable to pay compensation.



10.The Tribunal construed the deceased as a 3rd party. But, he travelled in the vehicle. So, he is not a 3rd party regarding the insured vehicle.

11.In view of the foregoing reasons, only the owner of the vehicle is liable to pay the compensation. Pay and recovery cannot be ordered.

12.At the time of accident, the deceased was working in BSF and the Identity Card of the deceased was also marked. Eventhough the claimants have claimed the deceased's salary as Rs.38,074/-only the Tribunal has fixed notional income as Rs.20,000/-. So, the compensation fixed by the Tribunal is not high. The compensation awarded by the Tribunal under various heads are reasonable.

13.Finally, this Civil Miscellaneous Appeal is partly allowed. The compensation amount awarded by the Tribunal is confirmed and the liability of the Appellant/Insurance Company is set aside. The 6th Respondent herein/Owner of the vehicle is directed to pay the entire compensation amount awarded by the Tribunal, within a period of Six months from the date of receipt of copy of the order. After depositing the compensation amount, the claimants are entitled to withdraw the same before the tribunal, on filing appropriate application. The amount of the minor claimant is to be deposited in any one of the Nationalized Bank till she attains majority. The 1st claimant is entitled to receive the accrued interest once in three months from the bank directly. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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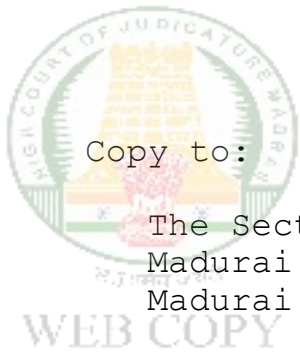
Sub Assistant Registrar(CS)

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To

1.The Motor Accident Claims Tribunal/
Principal District Judge,
Dindigul.

2.Palanivel,
S/o.Sokkalingam,
D.No.456,Keela kovilpatti,
Papanasum Taluk,
Tirunelveli District.



Copy to:

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

+1CC to M/s.I.Suthakaran, Advocate, SR.No.25578

C.M.A[MD]No.703 of 2021

14.06.2022

MGJ(28.06.2022) 4P 6C