



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CMA(MD)No.1366 of 2016 &

CMP(MD)No.11375 of 2016

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The New India Assurance Company Limited,
Karaikudi, through its Branch Manager

... Appellant/2nd Respondent

vs.

1.Lekkammal

2.Ganeshvel

3.Somu

...Respondent 1&2/Peitioners

...3rd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 25.02.2014 in MCOP.No.374 of 2001 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Palani.

For Appellant :Mr.J.S.Murali

For Respondents :Mr.G.Venugopal for R1 & R2
No appearance for R3

J U D G M E N T

The appellant filed this appeal against the Judgment and Decree dated 25.02.2014 in MCOP.No.374 of 2001 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Palani.

2. On 08.05.1999, the deceased Thangaraj and thirty other persons belonging to the village Poolangulam went from their native place by foot to worship lord Muruga at Palani. At about 02.00 am, near Manchalnayakkanpatti Railway Gate, a lorry bearing Registration No.TN 63 Z 0297 came in a rash and negligent manner and dashed against the deceased, as a result of which, the deceased Thangaraj died on the spot.

3. The respondents 1 and 2 are the wife and son of the deceased Thangaraj respectively. They filed MCOP.No.374/2001 claiming compensation for the demise of Thangaraj. The Tribunal after analysing the oral and documentary evidences on record, awarded a sum of Rs.6,00,000/- together with interest at the rate of 7.5% per annum as compensation and fixed the liability on the appellant herein. Challenging the same, the appellant has preferred this appeal.

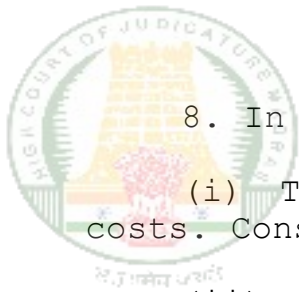


4. The learned counsel for the appellant would submit that on the date of the accident, the driver of the offending lorry was not in possession of valid driving licence. Already in a connected matter, an appeal was preferred by the New India Assurance Company in CMA(MD)No.920/2008, which was partly allowed by this Court on 22.12.2017. In the aforesaid matter, this Court directed the Insurance Company to deposit the entire award amount with accrued interests and costs and granted liberty to recover the award amount from the owner of the vehicle. He would therefore pray for pay and recovery to be ordered in the instant case also. Further, he would submit that though the claimants claimed only a sum of Rs.4,00,000/- as compensation, the Tribunal exorbitantly awarded a sum of Rs.6,00,000/- as compensation. The deceased was aged 45 years on the date of the accident, and hence, the proper multiplier to be adopted in the instant case is 14. However, the Tribunal adopted multiplier of 15, which is erroneous. Hence, he also prayed for the award amount to be reduced.

5. The learned counsel for the respondents 1 and 2 would submit that since in the connected matter this Court has already ordered pay and recovery, he has no objection for pay and recovery to be ordered in the instant case. As far as quantum of compensation is concerned, he would also submit that the Tribunal had adopted the wrong multiplier. However, since future prospects was not added to the monthly income of the deceased, he prays that the quantum of compensation awarded by the Tribunal need not be disturbed.

6. As pointed out by the learned counsel appearing for the appellant, this Court in a connected appeal in CMA(MD)No.920/2008, by order dated 22.12.2017 held that since the driver of the offending vehicle had no valid driving licence on the date of the accident, there is a violation of policy condition and directed the Insurance Company to pay the compensation to the claimants and recover the same from the owner of the offending vehicle. Hence, as regards the liability, this Court is inclined to follow the same and order pay and recovery. The appellant / Insurance Company is directed to pay the compensation to the respondents 1 and 2 / claimants at the first instance and then recover the same from the owner of the lorry bearing Registration No.TN 63 Z 0297.

7. As far as quantum of compensation is concerned, the Tribunal had adopted multiplier of 15. Since the deceased was aged 45 years on the date of the accident, the proper multiplier to be adopted in the instant case is 14 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Anyhow, the Tribunal failed to add any amount towards future prospects of the deceased. In such facts and circumstances, this Court is not inclined to disturb the quantum of compensation awarded by the Tribunal.



8. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is confirmed.

(iii) The appellant/Insurance Company is directed to deposit the compensation awarded by the Tribunal ie., Rs.6,00,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.374 of 2001 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Palani within a period of six weeks from the date of receipt of a copy of this order and then recover the same from the owner of the lorry bearing Registration No.TN 63 Z 0297.

(iv) On such deposit being made, the respondents 1 and 2 are at liberty to withdraw the same after following due process of law. The apportionment granted by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Motor Accident Claims Tribunal,
Subordinate Court, Palani.

Copy to

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

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-1662[F] dated 19/01/2022)

+1 CC to M/s.J.S.MURALI, Advocate (SR-1780[F] dated 19/01/2022)

CMA(MD)No.1366 of 2016
19.01.2022

RK(18/02/2022) 3P 6C