



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.10.2021

Delivered On : 04.01.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.295 of 2018

WEB COPY

The New India Assurance
Company Limited,
Rep. By the Branch Manager,
Pudukottai Branch,
B.B.K.Complex,
1st Floor, South Main Road,
Ambalpuram,
Pudukottai - 1.

...Appellant/2nd Respondent

Vs.

1.P.Palaniammal
2.Pasupathi
3.Sivasakthi
4.Ramachandran
5.T.Arivazhagan

... 1 to 4 Respondents/Claimants
... 5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.288 of 2011 dated 17.08.2017 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Kuzhithalai.

For Appellant	: Mr.M.S.Sureshkumar
For Respondents 1 to 4	: Mr.N.Sudhagar Nagaraj
For 5 th Respondent	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.288 of 2011 dated 17.08.2017, on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Kuzhithalai.

2.The appellant herein is the second respondent, the respondents 1 to 4 herein are the claimants and the fifth respondent herein is the first respondent in the claim petition. The respondents 1 to 4 herein have filed a claim petition in M.C.O.P.No.288 of 2011, claiming compensation for the death of one Palaniyappan, in an accident that took place on 19.11.2011. The Tribunal has awarded a sum of Rs.8,82,348/- (Rupees Eight Lakhs Eighty Two Thousand Three Hundred and Forty Eight only) as compensation. Against which, the appellant has preferred this appeal.



3. Brief substance of the claim petition in M.C.O.P.No.288 of 2011 is as follows:

On 19.11.2011, at about 03.15 a.m., when the deceased Palaniyappan was transporting railway equipments in a Mahindra Pickup Van bearing registration No.TN-47-Z-7589 along the Madurai - Tirunelveli main road near Ellaiyasananthan over bridge, the driver of the van drove the vehicle in a rash and negligent manner and hit against the centre median blocks. Since he could not control the van, he turned the van on the left side and dashed against the side wall of the bridge and the vehicle capsized and the deceased died on the spot. The deceased was working as a loadman and mason and was earning Rs.10,000/- (Rupees Ten Thousand only) per month. The petitioners are the dependants of the deceased and they claim a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation.

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

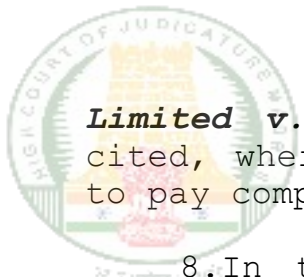
The driver of the van was not having valid driving licence at the time of accident. There is no badge endorsement in the licence. The vehicle is meant only for transporting goods. At the time of accident, the deceased and five others travelled in the vehicle. The policy conditions are violated. The second respondent is not liable to pay compensation. The seating capacity of the vehicle is only for two persons. The claimants have to prove that they are the legal heirs of the deceased. The age, profession and income of the deceased are to be proved.

5. The first respondent was set exparte. On the side of the claimants, three witnesses were examined and five documents were marked. On the side of the respondents, three witnesses were examined and three documents were marked. One witness document was marked. After trial, the Tribunal has awarded a sum of Rs.8,82,348/- (Rupees Eight Lakhs Eighty Two Thousand Three Hundred and Fourty Eight only) as compensation to be paid by the second respondent therein and to recover the same from the first respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6. On the side of the appellant, it is stated that the Tribunal is wrong in passing an order for pay and recover and the Tribunal ought to have fixed the liability entirely on the first respondent. The policy is applicable only for the persons who travelled in the cabin. Only two persons are entitled to travel in the van. Totally seven passengers travelled in the pick up van. The deceased was not an employee of the owner of the vehicle.

7. In support of this contention, a judgment of the Hon'ble Supreme Court in the case of **Manager, National Insurance Company**

<https://hcservices.ecourts.gov.in/hcservices/>



Limited v. Saju.P.Paul and another reported in **2013 ACJ 554** is cited, wherein it is held that the insurance company is not liable to pay compensation.

8.In the evidence of P.W.2 and P.W.3, it was admitted that seven persons travelled in the vehicle. Ex.R1 states that only two persons can travel in the pick up van. The Tribunal failed to consider the contents of the FIR. The Tribunal ought to have directed the owner of the vehicle to pay the compensation. The income fixed by the Tribunal is excessive. Only 10% to be added as future prospects. No other vehicle is involved in the accident. The negligence is only on the part of the driver of the goods vehicle. There is no permission for passengers to travel in the body of the vehicle. Seven persons travelled in the goods carrier. The order of pay and recover itself is wrong.

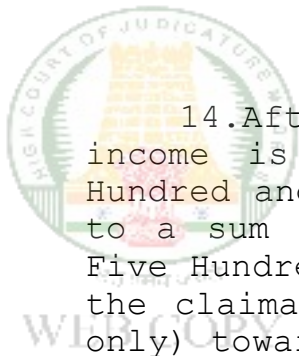
9.On the side of the respondents 1 to 4, it is stated that the deceased was a loadman cum mason travelled in the van. The evidence of P.W.3 is clear that the deceased worked as a loadman cum mason under the first respondent. Six persons including the driver travelled in the vehicle. There is only one claim in the accident. Quantum fixed by the Tribunal is reasonable.

10.On the side of the appellant, it is stated that only driver and the cleaner can travel in the van that too only in the cabin. Whereas the deceased travelled in the open body along with others. No premium was paid for passengers.

11.From the evidence of P.W.1 to P.W.3, Ex.P3, Ex.P4 and Ex.R3, it is decided that the accident took place due to the rash and negligent driving of the van driver. Ex.R1 policy copy reveals that additional premium (OD) was paid for workers. Hence, the appellant/insurance company is liable to pay compensation.

12.On the side of the appellant, it is stated that the driver of the van was not having valid driving licence. Ex.X1 reveals that the driver of the van was not having valid driving licence at the time of the accident. The policy copy was marked as Ex.R1. Ex.R1 was marked through R.W.2. Since the driver is not having licence, the appellant/insurance company is entitled to recover the amount from the fifth respondent/owner of the vehicle.

13.On the side of the appellant, it is stated that the income fixed by the Tribunal is excessive. Only based on the notional income prevailing at the time of the accident, the monthly income of the deceased is fixed as Rs.6,500/- (Rupees Six Thousand and Five Hundred only), which is reasonable. The age of the deceased at the time of the accident is 50 years and hence, the respondents 1 to 4 are not entitled for future prospects.



14.After deducting 1/4th towards his own expenses, the monthly income is calculated as Rs.4,875/- (Rupees Four Thousand Eight Hundred and Seventy Five only). The respondents 1 to 4 are entitled to a sum of Rs.7,60,500/- (Rupees Seven Lakhs Sixty Thousand and Five Hundred only) towards loss of income. As per **Praney Sethi** case, the claimants are entitled to Rs.70,000/- (Rupees Seventy Thousand only) towards conventional charges. In total, a sum of Rs.8,30,500/- (Rupees Eight Lakhs Thirty Thousand and Five Hundred only) is awarded as compensation.

15.Hence, it is decided that the respondents 1 to 4 are entitled to a sum of Rs.8,30,500/- (Rupees Eight Lakhs Thirty Thousand and Five Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

16.The appellant is directed to deposit Rs.8,30,500/- (Rupees Eight Lakhs Thirty Thousand and Five Hundred only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. The appellant is entitled to recover the amount from the fifth respondent/owner of the vehicle. On such deposit, the respondents are permitted to withdraw the award amount with interest after deducting any amount received by them earlier. The claimants are not entitled for interest for the default period, if there is any. Excess amount, if any deposited shall be refunded to the appellant. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MRN

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.

To

1.The Sub Judge,

The Motor Accidents Claims Tribunal, Kuzhithalai.

<https://hcservices.ecourts.gov.in/hcservices/>



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

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-247[F]
dated 04/01/2022)

+1 CC to M/s.M.S.SURESH KUMAR, Advocate (SR-458[F] dated 05/01/2022)

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