



WEB COPY



C.M.A.No.1773 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1773 of 2018
and C.M.P.No.13703 of 2018

The Branch Manager,
The Oriental Insurance Company Limited,
20, Gandhi Road, Kallakurichi.

...Appellant

Vs.

1. C.Subramaniyan
2. Annapurani
3. Arokiyammal
4. Daisi
5. John
6. Priya
7. Thiruvenkadam

...Respondents

(7th respondent *suo motu impleaded vide court order dated 20.06.2023 made in C.M.A.No.1773 of 2018 and CMP.No.13703 of 2018*)

PRAYER: The Civil Miscellaneous Appeal filed under Order XLIII Rule 1(t) of C.P.C, against the decree and judgment dated 04th day of August 2017 made in M.C.O.P.No.108 of 2015 on the file of Motor Accident Claims Tribunal (III Additional District Court) Kallakurichi.

For Appellant : Mr.K.Vinoth

For Respondents : Mr.D.Balachandran for R1 and R2

Not Ready in Notice [R3 to R7]



C.M.A.No.1773 of 2018

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the decree and judgment dated 04th day of August 2017 made in M.C.O.P.No.108 of 2015 on the file of Motor Accident Claims Tribunal (III Additional District Court) Kallakurichi.

2. It is the case of the claimants that on 10.11.2011 at about 6.15 p.m., when the deceased was waiting for the bus standing on the left side of the road, the van bearing Regn. No.TN-27-Q-6444 driven in a rash and negligent manner dashed against the deceased, leading to her death. The claimants, as the parents of the deceased, filed the claim petition claiming compensation.

3. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked 17 documents viz., Ex.P.1 to Ex.P.17. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.9,00,000/- as compensation under various heads. Aggrieved by the same, the present appeal has been filed by the appellant/ Insurance



C.M.A.No.1773 of 2018

Company.

WEB COPY

4. Learned counsel appearing for the appellant/insurance company submitted that the claim petition is not maintainable as with regard to the very same death, the husband of the deceased had filed claim petition in MCOP No.917/2013 and received compensation of Rs.6 Lakhs on consent award passed before Lok Adalat on 23.11.2013 and, therefore, the second claim petition is not maintainable. It is the further submission of the learned counsel that the factum of marriage of the deceased with the said Thiruvengadam, who filed MCOP No.917/2013 had been suppressed and it had been shown that the deceased was separated from her husband. The said facts have not been properly appreciated by the Tribunal, which requires interference.

5. Per contra, learned counsel appearing for the claimants submit that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.



C.M.A.No.1773 of 2018

WEB COPY 6. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents 1 and 2 and perused the materials placed on record.

7. There is no quarrel that the accident happened in the year 2011 for which the husband of the deceased had filed MCIP No.917/2013 in which an award had come to be passed in the Lok Adalat. The said fact is a matter of record and cannot be disputed. The deceased is married to the claimant in MCOP No.917/2013 and there is no material placed by the claimants herein to show that the deceased had separated from her husband. In the absence of any material, the claim petition at the instance of the parents of the deceased, viz., the claimants herein is not maintainable and, therefore, the award passed by the Tribunal is erroneous and the same cannot be sustained.

8. Accordingly, the award dated 04.08.2017 passed by the Motor Accident Claims Tribunal, Kallakurichi is set aside and this appeal is



C.M.A.No.1773 of 2018

allowed. However, liberty is granted to the claimants/respondents herein to work out their remedy before the appropriate civil court with regard to receipt of share of the compensation paid to the husband of the deceased. No costs. Consequently, connected miscellaneous petition is closed.

31.10.2023

Speaking Order / Non Speaking Order : Yes/No
Index : Yes/No
NCC : Yes/No

To

1. Motor Accident Claims Tribunal (III Additional District Court)
Kallakurichi.

2. The Registrar, City Civil Court, Chennai.
rap

M.DHANDAPANI,J



WEB COPY



C.M.A.No.1773 of 2018

rap

C.M.A.No.1773 of 2018

31.10.2023