



C.M.A.(MD).No.126 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.126 of 2009

and

M.P(MD) No.1 of 2009

The United India Insurance Company Ltd.,
Represented by its Branch Manager,
City Branch II,
254, Goods Shed Street,
Madurai.

.....Appellant/2nd Respondent

-vs-

1. S.Selvakathiraman
2. S.Neelavathi
3. S.Packiajothi
4. G.Panju @ Pappathi
5. J.Sundararajan

..... Respondents 1 to 4/ Claimants

.... Respondent - 5 /1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 13.08.2008 made in M.C.O.P.No.2328 of 2004 on the file of the Motor Accident Claims Tribunal/ Additional District Judge/ Fast Track Court-3, Madurai.

For Appellant : Mr.A.Ilango

For Respondents : Mr.B.A.Muruganantham for R1 to R4
: Mrs.K.R.Sivashankari – for R5



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The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/Additional District Judge/ Fast Track Court-3, Madurai in M.C.O.P.No.2328 of 2004 primarily on the ground of liability.

2. According to the claimants, the deceased Ganesan was a pedestrian and he was hit by an ambassador car owned by the first respondent and insured with the second respondent, in an accident that occurred at about 08.00 a.m on 24.10.2003. According to the claimants, the deceased was Quarry Supervisor and he was earning a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) per month. The claimants prayed for compensation of a sum of Rs.10,00,000/- (Rupees Ten Lakhs only).

3. The owner of the offending vehicle had filed a counter contending that he had sold the vehicle long back and ultimately, the ambassador car was dismantled. Therefore, on the date of the accident, such a car was not available for use in the public road. Hence, he prayed for dismissal of the claim petition. A similar stand was taken by the Insurance Company in their



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counter. The Insurance Company has also disputed the negligence and the quantum. The Insurance Company has further contended that since the ambassador car has been dismantled, there was no insurance for the said vehicle on the date of the accident.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident has happened only due to the rash and negligent driving on the part of the driver of the ambassador car. The Tribunal further found that since the Insurance Company has not specifically denied the fact that there was no insurance, mulcted the liability on the Insurance Company. Challenging the same, the present appeal has been filed by the Insurance Company.

5. The learned counsel appearing for the appellant/Insurance Company had contended that it is the specific case of the owner of the ambassador car as well as the Insurance Company that the vehicle was dismantled long back and there was no insurance for the said vehicle on the date of the accident. A copy of the policy was also not marked by the claimants. Therefore, the Tribunal was not right in mulcting the liability to satisfy the award on the appellant/Insurance Company.



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6. Pending appeal, the claimants have produced the copy of the Insurance Policy issued by the appellant/Insurance Company. A perusal of the policy indicates that it was issued in the name of the first respondent in the claim petition. The period of insurance was between 22.03.2003 to 21.03.2004 which covers the period of accident. A copy of the said policy was furnished to the learned counsel appearing for the appellant to verify the same from the Company. On verification, the learned Counsel appearing for the appellant/Insurance Company submits that, in fact, such policy has been issued by the Branch Manager, City Branch -II, 254, Goods Shed Street, Madurai. Therefore, it is clear that the insurance policy was issued by the appellant/Insurance Company to the ambassador car owned by the first respondent and the same was subsisting on the date of the accident. Therefore, it is clear that the award of the Tribunal mulcting the liability on the Insurance Company cannot be interfered with.

7. The learned counsel appearing for the respondents 1 to 4/claimants had contended that the deceased was a Quarry Supervisor and he was earning a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only). However, only a sum of Rs.3,000/- (Rupees Three Thousand only) was taken



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as the notional income by the Tribunal and he sought for enhancement of the award under the head of loss of income. He further contended that the Tribunal has awarded lesser amount under the head of love and affection, loss of consortium, loss of estate and transportation charges. However, the learned counsel appearing for the appellant pointed out that the accident has taken place in the year 2003. The claim petition has been filed in the year 2004. The appeal is pending before this Court from the year 2009 onwards. So far, the claimant had not chosen either to file an independent appeal or cross objection seeking enhancement of compensation. That apart, the total award of the Tribunal is to an extent of Rs.4,05,000/- (Rupees Four Lakhs and Five Thousand only). The accident has taken place in the year 2003 and it cannot be considered to be lesser amount and it does not require any enhancement.

8. As rightly contended by the learned counsel appearing for the respondents 1 to 4/claimants, even if the claimants are not able to establish the actual income of the deceased person, the notional income was arrived at Rs.4,500/- (Rupees Four Thousand and Five Hundred only). Therefore, the Tribunal was not right in reducing the notional income from Rs.4,500/- to Rs.3,000/-. Therefore, this Court is inclined to enhance the compensation



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under the head of loss of income. Thus, the compensation comes to Rs.4,500x12x2/3x16 = Rs.5,76,000/- (Rupees Five Lakhs and Seventy Six Thousand only)

9. The Tribunal has awarded just Rs.10,000/- (Rupees Ten Thousand only) towards loss of consortium. This Court is inclined to enhance the same to a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards loss of consortium to the 4th claimant. The Tribunal has awarded a sum of Rs.2,000/- (Rupees Two Thousand only) to each one of the other claimants towards loss of love and affection. This Court is inclined to award a sum of Rs.10,000/- towards loss of love and affection for each one of the other claimants. The Tribunal has awarded just Rs.5,000/-(Rupees Five Thousand only) towards funeral expenses. This Court is inclined to enhance the same to a sum of Rs.10,000/- (Rupees Ten Thousand only) and this Court is inclined to award a sum of Rs.5,000/- (Rupees Five Thousand only) towards transportation expenses.

10. In view of the above said deliberations, the award of the Tribunal is modified as follows:



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Loss of income	: Rs.5,76,000/-
Loss of consortium to the 4 th claimant	: Rs. 25,000/-
Loss of Love and Affection 10x4	: Rs. 40,000/-
Funeral expenses	: Rs. 10,000/-
Transportation charges	: <u>Rs. 5,000/-</u>
Total	: Rs.6,56,000

11. Therefore, the award of the Tribunal is modified and enhanced from Rs.4,05,000/- - to Rs.6,56,000/- (Rupees Six Lakhs and Fifty Six Thousand only) and the said enhanced amount will carry interest at the rate of 7.5% per annum from the date of the claim petition. The 4th claimant/ wife shall be entitled to Rs.4,00,000/- (Rupees Four Lakhs only) and the balance amount shall be shared by the other claimants equally. The Insurance Company is directed to deposit the balance amount within a period of eight weeks from the date of receipt of a copy of this order.



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12. Accordingly, this Civil Miscellaneous Appeal is allowed to the extent as sated above. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal/
Additional District Judge/
Fast Track Court-3, Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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