



C.M.A.(MD).No.1607 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1607 of 2010

and

M.P(MD) No.4 of 2010

The Branch Manager,
New India Assurance Company Limited,
No.147, Salai Theru,
Ramanathapuram.

... Appellant/2nd Respondent

-vs-

1. Sithi Ayiza
2. Abthaheer Ali
3. Bagar

... Respondents 1 to 3 /
Petitioners 1 to 3

4. Ramu Ammal

... 4th Respondent/
1st Respondent

5. Nazeema Banu

6. Amsath Banu

7. Mohammed Jameen

... Respondents 5 to 7/
Respondents 3 to 5

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award made in M.C.O.P.No.245 of 2005, dated 17.09.2007, on the file of the Motor Accidents Claims Tribunal/Fast Track Court, Ramanathapuram.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/Fast Track Court, Ramanathapuram, made in M.C.O.P.No.245 of 2005 primarily on the ground of involvement of vehicle.

2. According to the claimants, the deceased who was aged about 49 years and doing fish business, was earning a sum of Rs.3,000/- (Rupees Three Thousand only) per month. While he was riding a bicycle on 16.05.2000 at about 11.30 a.m., an ambassador car owned by the first respondent and insured with the second respondent was driven in a rash and negligent manner and dashed against the cyclist. In the said accident, the cyclist had sustained grievous injuries and he passed away. The claimants have claimed a sum of Rs.3,00,000/- (Rupees Three Lakhs only) towards compensation.

3. The Insurance Company had filed a counter contending that the insured vehicle was not at all involved in the said accident. Further, they have also disputed the quantum of compensation as prayed for by the claimants.



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4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the Ambassador Car was involved in the said accident and the said accident had taken place only due to the rash and negligent driving on the part of the driver of the ambassador Car.

5. The Tribunal further found that the deceased was doing fish business, earning a sum of Rs.3,000/- (Rupees Three Thousand only) and after deducting 1/3rd arrived at a quantum of Rs.2,000/- (Rupees Two Thousand only) per month and the annual income was fixed at Rs.24,000/- (Rupees Twenty Four Thousand only) and applying multiplier of “11” arrived at a compensation of Rs.2,64,000/- (Rupees Two Lakhs Sixty Four Thousand only) under the head of loss of income. A sum of Rs.2,000/- (Rupees Two Thousand only) was awarded towards funeral expenses. A sum of Rs.25,000/- (Rupees Twenty Five Thousand only) was awarded towards loss of consortium, A sum of Rs.10,000/- (Rupees Ten Thousand only) was awarded towards loss of estate and another sum of Rs.10,000/- (Rupees Ten Thousand only) towards loss of love and affection. Totally, a sum of Rs.3,00,000/- (Rupees Three Lakhs only) was awarded. Challenging the said award, the



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present appeal has been filed by the Insurance Company.

6. Though the claimants have been served, they have not chosen to appear either in person or through their counsel.

7. The learned counsel appearing for the appellant had contended that in the FIR, there is no mention about the registration number of the vehicle. The defacto complainant of the said FIR has not been examined before the trial Court. The driver of the alleged offending vehicle has been acquitted in the criminal case. Therefore, the involvement of the vehicle is highly doubtful. The Tribunal ought to have arrived at a finding that the claimants have not established the involvement of the vehicle owned by the first respondent. When the involvement of the vehicle has not been established, the question directing the Insurance Company to satisfy the award of the Tribunal does not arise. Hence, he prayed for allowing the appeal.

8. I have carefully considered the submission made by the learned counsel for the appellant.



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9. It is true that the Ex.P.1- FIR does not reflect the registration number of the offending vehicle. However, on the very next day, the vehicle has been subjected to inspection by the Motor Vehicle Inspector on 17.05.2000 at 06.00 p.m. In the said report, he has specifically noted that the head light lens and indicator on the left side of the ambassador car have been damaged. Therefore, it is clear that though the vehicle number was not mentioned in the FIR, immediately the vehicle was traced and it was subjected to the Motor Vehicle Inspector inspection, on the next day. The damage in the left side of the car will clearly indicate that the car had dashed against the rear side of the cyclist. Due to which, the death had happened. Therefore, this Court does not find any reason to doubt the involvement of the ambassador Car belonging to the first respondent herein.

10. As far as the quantum is concerned, the Tribunal has arrived at a finding that they are entitled to receive a sum of Rs.3,11,000/- (Rupees Three Lakhs Eleven Thousand only) as compensation. However, since the prayer is restricted to Rs.3,00,000/- (Rupees Three Lakhs only), the said amount has been awarded. Therefore, this Court does not find any reason to interfere either the negligence or with regard to the quantum and the appeal lacks



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merits.

11. Accordingly, this Civil Miscellaneous Appeal stands dismissed.
There shall be no order as to costs. Consequently connected Miscellaneous
Petition is closed.

15.06.2023

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

1. The Motor Accidents Claims Tribunal/ Fast Track Court,
Ramanathapuram.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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