



C.M.A.(MD)No.809 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.809 of 2011

and

M.P.(MD)No.2 of 2011

The Oriental Insurance Co. Ltd.,
through its Branch Manager,
CBO XI, Chennai,
No.251, First Floor,
Arcot Road, Vadapalani,
Chennai 600 026.

... Appellant

Vs.

1.Govindan

2.Mariappan

3.A.M.Mohammed Ibrahim

... Respondents

(3rd respondent remained exparte before the lower Court)



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PRAYER: Civil Miscellaneous Appeal filed under Order 173 of Motor Vehicles Act, 1988, to set aside the award of Rs.5,16,500/- (Rupees Five Lakhs Sixteen Thousand and Five Hundred only) passed in M.C.O.P.No. 1121 of 2008, dated 08.12.2010, on the file of the Motor Accidents Claims Tribunal cum Additional District & Sessions Judge, (FTC-I), Tirunelveli.

For Appellant : Mr.K.Bala Subrmanian

For respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is by the Insurance Company against the award made in M.C.O.P.No.1121 of 2008, dated 08.12.2010 on the file of the Motor Accidents Claims Tribunal cum Additional District & Sessions Judge, (FTC-I), Tirunelveli.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.



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3. The brief facts in a nutshell are as follows:

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The deceased, namely Ayyappan was aged about 30 years at time of the accident. On 16.07.2008 at about 23.15 hours at Chinmayanagar Junction on the Coimbedu Kalamman Kovil Road in which the Motor cycle bearing Registration No.TN 09 AD 8628, belonging to the 1st respondent, driven by one G.Sankar dashed against the deceased. As a result, the deceased sustained multiple injuries and he has taken to the Government General Hospital at Chennai, the same day immediately. In spite of the best and effective treatment rendered, the said Ayyappan died on 21.07.2008 at about 9.30 hours. The claimants are the brothers of the unmarried deceased person. They have filed M.C.O.P.No.1121 of 2008 before the Motor Accidents Claims Tribunal cum Additional District & Sessions Judge, (FTC-I), Tirunelveli, seeking compensation of Rs. 20,00,000/- (Rupees Twenty Lakhs only). The 2nd respondent had filed a counter before the Tribunal as against the allegations set forth in the claim petition. Two witnesses were examined and Ex.P.1 to Ex.P.4 were marked on the side of the petitioners. One witness was examined and Ex.R1 to Ex.R.6 were marked on the side of the respondents. After considering the oral and documentary evidence and the learned Tribunal framed three



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issues. The Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver/first respondent and fixed the liability on the part of the Insurance Company and also awarded a sum of Rs.5,16,500/- (Rupees Five Lakhs Sixteen Thousand and Five Hundred only) as compensation with interest at 7.5% p.a. from the date of petition. The details of the compensation are as follows:-

S.No.	Description	Amount
1.	Loss of income	Rs. 5,10,000/-
2.	Transport and funeral	Rs. 6,000/-
3.	Accompanying persons expenses	Rs. 500/-
	Total	Rs. 5,17,500/-

Aggrieved by that award, the appellant / Insurance Company has filed the present appeal.

4. The learned counsel for the appellant / Insurance Company vehemently contended that the Insurance Company is not liable to pay any compensation to the claimants on the ground that the claimants are neither



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the parents of the deceased nor the children of the deceased. They are not the dependants and since they are only the legal heirs, they cannot file petition under Motor Vehicles Act, 1988. Therefore, the Insurance Company is not liable to pay any compensation to the claimants. Alternatively, it is submitted that the compensation awarded by the Tribunal is excessive, exorbitant and without any basis and justification. Hence the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. Heard the learned Counsel appearing for the appellant and perused the materials available on record.

6. This Court is of the considered opinion that Section 166 Sub Section 1 (d) of Motor Vehicles Act, 1988 provides that the legal heirs of the deceased can make an application for compensation. In view of the same, there is no bar for the brothers to file this M.C.O.P. On critical perusal of the entire award, it is clear that the Tribunal has rightly assessed the oral and documentary evidence and arrived at a just and reasonable



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compensation. In view of the same, this Court is of the considered view that this amount is not excessive. Hence, I am not inclined to interfere with the award passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

7. The Insurance Company is directed to deposit the entire compensation amount as awarded by the Tribunal with accrued interest and costs to the credit of M.C.O.P.No.1121 of 2008 on the file of the Motor Accident Claims Tribunal cum Additional District Judge & Sessions Judge, (FTC-I), Tirunelveli within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the claimants are permitted to withdraw the said amount, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs.

07.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



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To

The Motor Accident Claims Tribunal
cum Additional District Judge &
Sessions Judge,
(FTC-I), Tirunelveli

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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