



C.M.A(MD)No.405 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.405 of 2013

and

C.M.P(MD)No.3413 of 2022

M/s.The Oriental Insurance Company Ltd.,
Through its Regional Manager,
Third Party Hub Office,
16, K.J.R.Complex,
North Veli Street,
Madurai-625 001.

... Appellant/2nd Respondent

Vs.

1.Uma Maheswari

2.Minor Malathi

3.R.Panneer Selvi

... Respondents/Petitioners 1-3

4.N.Mathan

... Respondent/1st Respondent

(Minor R1 is declared as major & guardianship of her guardian (R3) is discharged vide Court order, dated 31.03.2022 made in C.M.P(MD)Nos.8768 & 8770 of 2021)

(R2 is represented through R3)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the award of Rs.8,23,000/-



C.M.A(MD)No.405 of 2013

(Rupees Eight Lakh Twenty Three Thousand only) passed in M.C.O.P.No.1014 of 2011, dated 22.11.2012 on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai.

For Appellant : Mr.C.Karthick

For R1-R3 : Mr.K.Ravi

For R4 : No Appearance

JUDGEMENT

The present appeal has been filed by the insurance company challenging an award passed by the Motor Accident Claims Tribunal, Madurai primarily on the ground that another M.C.O.P was filed by the father of the deceased person and the fate of the said application is not known.

2. As per the claim petition, one Dhanalakshmi who was a vegetable wholesale vendor was sitting as a pillion rider in a motorbike driven by her husband Pandiarajan. Due to the rash and negligent driving of her husband, the pillion rider had fallen down and had sustained head injuries. After being admitted in the Government Rajaji Hospital, she passed away on the next day.



C.M.A(MD)/No.405 of 2013

3. According to the claimants, the accident was due to the rash and negligent driving of the husband of the deceased, namely Pandiarajan and a criminal case was registered as against him in Crime No.158 of 2011. The claimants have further contended that the deceased being a wholesale fruits and vegetable vendor, her daily income was Rs.400/- (Rupees Four Hundred only) and she was earning a sum of Rs.9,000/- (Rupees Nine Thousand) per month. Therefore, they prayed for a sum of Rs.10,00,000/- (Rupees Ten Lakh only) towards compensation.

4. The insurance company had filed a counter disputing the manner of accident, occupation and income of the deceased person. The owner of the vehicle, who was arrayed as a 1st respondent had remained *ex parte* and therefore, the insurance company had pleaded that it is for the claimants to establish that the 1st respondent is the owner of the vehicle. The insurance company also challenged the quantum of the award.

5. The tribunal after considering the oral and documentary evidence had arrived at a finding that the deceased was travelling as a pillion rider driven by her husband and due to the application of sudden



C.M.A(MD)No.405 of 2013

brake, the deceased pillion rider had fallen down and she had succumbed to the injuries. The tribunal had relied upon Exhibit P.1 Accident Register, Exhibit P.2 F.I.R, Exhibit P.4 Motor Vehicle Inspector's Report and Exhibit P.6 Rough Sketch to arrive at a finding that the husband of the deceased had driven the motor bike in a rash and negligent manner.

6. The tribunal has also arrived at a finding that the wife being a third party to the insurance policy, she is entitled to receive compensation from the owner of the vehicle, namely the 1st respondent and the 2nd respondent who is the insurer of the said vehicle. The claim petition was presented by the grand-mother of the minor children of the deceased. The tribunal had found that though the father was alive, the children could be represented through their grand-mother. The mother of the deceased was also shown as the 3rd claimant in the claim petition. The tribunal had arrived at a finding that the monthly income of the deceased as a vegetable vendor was Rs.3,000/- (Rupees Three Thousand only) per month and 1/3rd should be deducted towards her personal expenses. The Court had added 30% towards future prospects, namely Rs.900/- (Rupees Nine Hundred only). Thereafter, the tribunal arrived at a sum of Rs.



C.M.A(MD)No.405 of 2013

7,95,600/- (Rupees Seven Lakh Ninety Five Thousand and Six Hundred only) towards loss of income. Rs.15,000/- (Rupees Fifteen Thousand only) towards loss of love and affection, Rs.5,000/- (Rupees Five Thousand only) towards funeral expenses, Rs.5,000/- (Rupees Five Thousand only) for loss of estate, Rs.2,000/- (Rupees Two Thousand only) towards transport to hospital expenses and totally a sum of Rs. 8,23,000/- (Rupees Eight Lakh Twenty Three Thousand only) was awarded by the tribunal.

7. The learned counsel appearing for the appellant had contended that the said Pandiarajan, who had driven the vehicle had independently filed M.C.O.P.No.1475 of 2011 as if he is the 1st claimant and the minors are the 2nd and 3rd claimants. Only thereafter, the claim petition in M.C.O.P.No.1014 of 2011 has been filed by the mother of the deceased showing her as the guardian of the minor children of the deceased person. Therefore, according to the learned counsel appearing for the insurance company, there is no provision under the Act for a double compensation, one claimed by the husband of the deceased and the claimants and the other one by the minor children of the deceased lady. Therefore, he contended that the double claim is not maintainable and



C.M.A(MD)/No.405 of 2013

prayed that this Court may allow the present appeal.

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8. Per contra, the learned counsel appearing for the respondents/claimants have pointed out that M.C.O.P.No.1475 of 2011 filed by the Pandiyarajan and his children has been withdrawn by them and therefore, there was no impediment for the tribunal to consider the claim petition in M.C.O.P.No.1014 of 2011.

9. As far as the quantum is concerned, the tribunal has taken only a conservative view of Rs.3,000/- (Rupees Three Thousand only) per month for a lady, who was a wholesale vegetable vendor and the compensation has been awarded under various heads. Considering the fact that the children were minor at the time of death of their mother, I do not find the award of Rs.8,23,000/- (Rupees Eight Lakh and Twenty Three Thousand only) to be unreasonable or exorbitant. Considering the fact that for love and affection, for both the children, only a sum of Rs.15,000/- (Rupees Fifteen Thousand only) has been awarded. A perusal of the award indicates that the major portion of the award, namely Rs.3,86,500/- (Rupees Three Lakh Eighty Six Thousand and Five Hundred only) has been awarded to each children and only a sum of



C.M.A(MD)No.405 of 2013

Rs.50,000/- (Rupees Fifty Thousand only) has been awarded to the mother of the deceased person. Therefore, there cannot be any grievance with regard to the apportionment of the claim amount also. Viewed from any angle, I do not find any merits in the appeal. Hence, the appeal stands dismissed.

10. According to the learned counsel appearing for the respondents, the appellant insurance company has deposited only a sum of 75%. The insurance company is directed to deposit the balance 25% along with interest at the rate of 7.5% from the date of the filing of the claim petition till the date of realization.

11. With the above said observations, this Civil Miscellaneous Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

13.03.2023

NCC : Yes / No
Index : Yes / No
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C.M.A(MD)No.405 of 2013

To

- 1.The Motor Accident Claims Tribunal
cum IV Additional District Judge,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.405 of 2013

R.VIJAYAKUMAR ,J.

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Order made in
C.M.A(MD)No.405 of 2013

13.03.2023