



C.M.A.(MD)No.747 of 2013

CBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 29.11.2022

Delivered On : 15.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.747 of 2013

The Oriental Insurance Company Limited,
90-A, Branch Office,
Thuraiyur Road, Namakkal.

.. Appellant /2nd Respondent

Vs.

1.Subramanian (died)

2.Jothi

... Respondents 1 & 2 /
Respondents 1 and 2

3.Senthilkumar

... 3rd Respondent/1st Respondent

(Memo presented before the Court on 23.11.2022 is recorded as first respondent died, and second respondent, who is already on record, is recorded as LR of the deceased first respondent vide Court order dated 23.11.2022 made in CMA(MD).No. 747 of 2013)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.174 of 2001 dated 26.11.2008 on the file of the Motor Accidents Claims Tribunal cum III Additional Sub Judge, Trichirappalli.



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For Appellant

: Mr.C.Karthik

For Respondents

: Mr.N.Sudhagar Nagaraj (for R2)

R1-died

R3-No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 26.11.2008, made in M.C.O.P.No.174 of 2001, on the file of the Motor Accidents Claims Tribunal cum III Additional Sub Judge, Trichirappalli. The appellant herein is the second respondent, the respondents 1 and 2 herein are the claimants and the third respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition in M.C.O.P.No.174 of 2001, is as follows:

On 15.08.2000, at about 5.00 am., when the deceased was walking along the left side of the Trichy-Chennai National Highways, a car bearing registration No.TN -I- 6307 driven by the first respondent's driver came in a rash and negligent manner and dashed against the deceased. The deceased was aged about 21 years. He was doing agricultural coolie work and he was earning a sum of Rs.4,500/- per month. The claimants are his dependants and they claimed a sum of Rs.4,00,000/- as compensation.



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3. Brief substance of the counter filed by the second respondent in M.C.O.P.No.174 of 2002, is as follows:

The age, profession and income are all denied. The first respondent failed to inform the accident. The accident did not happen due to the rash and negligent driving of the first respondent's driver. The first respondent's driver was not having valid driving license. The vehicle was not having permit. It was the deceased, who was negligent. The second respondent is not liable to pay compensation.

4. 2 witnesses were examined and 5 documents were marked, on the side of the claimants. 3 witnesses were examined and 2 documents were marked, on the side of the respondents. One document was marked as Ex.C.1. After considering both sides, the tribunal awarded a sum of Rs.1,50,000/- as compensation to be paid by the second respondent on behalf of the first respondent.

5. Against the award, the second respondent/appellant filed this appeal on the following grounds:

5.1. The vehicle in question which caused the accident could not be traced out and the CD file of Siruganoor Police Station was marked through R.W.1, Head



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Constable. Only after a lapse of three months, the vehicle insured with the appellant was identified and later, the vehicle was sent to Motor Vehicle Inspection. FIR was registered as 'hit and run case' on the complaint given by Village Administrative Officer. The tribunal failed to note that the findings recorded in this case is perverse and fastening liability on the appellant is wrong. The compensation should always be fair and not a bogus.

6. On the side of the appellant, it is stated that it is only a hit and run case. The informer was the Village Administrative Officer. Ex.P.1 is the FIR, wherein it is mentioned that the accident was happened only due to some unidentified vehicle. Only after a lapse of three months, the alleged vehicle was identified. The evidence of R.W.1 and CD file produced on the side of the respondents reveals that the alleged vehicle was not at all involved in the case.

7. P.W.2 was examined as an eye witness. P.W.2 did not give any complaint before the police. As soon as the case was registered, the driver came forward and he paid the fine amount. There is a doubt since the driver admitted the guilty.



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WEB COPY 8. The Village Administrative Officer, who lodged the complaint, was not examined as a witness. The driver of the vehicle was not examined. After three months, the vehicle was identified and subsequent to the date of alleged identification of the vehicle, the vehicle was sent for motor vehicle inspection. This is the bogus case and the vehicle was not at all involved in the occurrence.

9. On the side of the respondents 1 and 2, it is stated that the occurrence has happened in the year 2000. The tribunal passed the award in the year 2008 and the appeal was filed only in the year 2013. It was the VAO, who lodged the complaint. P.W.2 was not a relative to P.W.1. Hence, the evidence of P.W.2 is reliable. The driver of the vehicle admitted his guilt and he paid the fine amount. Only Rs.1,50,000/- was awarded for a fatal case and hence, prayed the award to be confirmed.

10. It is seen that the FIR was registered on the complaint of the VAO. The vehicle number was not mentioned in the FIR. P.W.2 was examined as an eye witness. Ex.P.3 is the copy of the charge sheet. Ex.P.4 is the copy of the judgment of the criminal Court. The driver of the vehicle admitted his guilt and he was convicted. R.W.2 is the private investigation officer appointed by the appellant. It is



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stated that the VAO, who lodged complaint, has given a statement to R.W.2. The private investigation report was marked as Ex.R.1. But, the VAO was not examined as a witness before the tribunal. R.W.3 is an official from the appellant – Insurance Company. On the basis of the evidence of P.W.2 and on the basis of Ex.P.1, Ex.P.2 and Ex.P.4, the tribunal fixed the liability on the car driver, which is reasonable.

11. Copy of the Insurance policy was marked as Ex.R.2. There is no dispute regarding the policy condition.

12. On the side of the appellant, it is stated that the income fixed by the tribunal is excessive. Since the salary of the deceased was not proved through documents, the Tribunal has awarded a sum of Rs.1,50,000/- as compensation for loss of income, loss of love and affection, loss of expectation of life, funeral expenses and transport expenses.

13. There is no cross objection or appeal against the quantum fixed by the Tribunal. Hence, it is decided that the award amount fixed by the Tribunal is reasonable.



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14. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this **Appeal is dismissed**. The compensation awarded by the Tribunal is hereby confirmed.

(i) Since **the first claimant/first respondent herein is dead, the second claimant-second respondent herein, who is the legal representative of the first claimant, is entitled to Rs.1,50,000/- as compensation.**

(ii) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.1,50,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the Insurance Company, the second claimant – second respondent herein is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

15.02.2023

Index : Yes/No
Internet : Yes/No
Rmk/Ls



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R. THARANI, J.

Ls

To

1. The Motor Accidents Claims Tribunal cum

III Additional Sub Judge, Trichirappalli.

2. The Section Officer,

V.R. Section, Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.747 of 2013

15.02.2023