



C.M.A.(MD).No.260 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 22.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.260 of 2019

1.Lakshmi
2.Ramesh

... Appellants

Vs.

1.S.Seenivasan
2.The Oriental Insurance Co. Ltd.,
1024-1, Sri Vijay Complex II Floor,
Opp. To Bus stand, Cumbum Road,
Theni – 625 531.

... Respondents

(1st Respondent exparte in lower Court.
1st respondent notice may be dispensed with)

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 22.11.2018 passed in M.C.O.P.No.16 of 2013 by the learned Sub Judge, Uthamapalayam fasten the liability on the second respondent and enhance the award amount.



C.M.A.(MD).No.260 of 2019

For Appellant : Mr.N.Vallinayagam
For R1 : Exparte
For R2 : Mr.C.Jawahar Ravindran

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal (Sub Judge), at Uthamapalayam in M.C.O.P.No.16 of 2013 dated 22.11.2018.

2.For the sake of convenience, the parties are arrayed herein as per the rank in M.C.O.P.No.16 of 2013.

3.The factual matrix of the present case, briefly stated, are as under:-

The petitioners are the parents of the deceased Ajith Kumar, who was aged 12 years at the time of death. The deceased Ajith Kumar was studying 8 standard in the year 2012. On 20.11.2012 at about 14.00 hours, the deceased Ajith Kumar was accommodated on the side of the tractor by one Manikandan, who was driving a tractor bearing



C.M.A.(MD).No.260 of 2019

registration No.TN-67-F-1758. While the said Manikandan was ploughing the garden land of one Natarajan situated to the west of Maniyampatti due to the rash and negligent driving of the driver of the tractor, the deceased Ajith Kumar fell down over the plough, as the result of which, grievously hurt in his head and fainted. Immediately the fainted Ajith Kumar was taken to Bodinayakanor Government Hospital for first aid and thereafter, taken to Theni Medical College Hospital and wherein he was declared dead. Bodinayakanor Police Station immediately registered Crime No.403 of 2012 under Section 304A of IPC as against the driver Manikandan. The first respondent is the owner of the tractor, who had employed the said Manikandan for driving. The second respondent is the Oriental Insurance Company Limited with whom the tractor was insured.

4.The father and mother of the deceased 12 years old Ajith Kumar filed a claim petition in M.C.O.P.No.16 of 2013 under Section 166 of Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal at Uthamapalayam praying for a compensation of Rs.7,00,000/- along with interest from the date of accident till the date of realization.



C.M.A.(MD).No.260 of 2019

WEB COPY

5.Two witnesses were examined on the side of the appellants/claimants, P.W.1 being the second appellant and P.W.2 was one Subramani, who was the eye witness and six documents were marked through P.W.1. Four witnesses were examined on the side of the respondents and six documents were marked on the side of the respondents.

6.The Motor Accident Claims Tribunal after considering the evidence placed on record, came to the conclusion that the tractor was driven by the driver of the first respondent without permission for attaching the plough to the tractor. That apart there is no permission for more than one person to travel in the tractor. Under such circumstances, the driver of the tractor inadvertently permitted the deceased minor boy to sit in the side of the tractor and had driven the same in rashly and negligently and causing the boy to fell over the plough sustaining hurt in his head, resulting in death. Though the tractor involved had been insured with the second respondent, since the same has been driven by the driver violating the conditions of the policy by accommodating



C.M.A.(MD).No.260 of 2019

another person other than the driver in the tractor, the learned Tribunal has categorically dismissed the claim petition as against the second respondent and had concluded that the first respondent is entitled to compensate the claimants for the death of the minor son.

7.The MACT awarded compensation to the family of the deceased is as follows:-

Head	Compensation awarded
(I)Income:	Rs.10,000/- per year
(ii)Multiplier:	15 (as per the age of the deceased)
(iii)Loss of future income:	Rs.4,50,000/- [I.e.30,000x15]
(iv)Funeral expenses:	Rs.15,000/-
(v)Filial Consortium:	Rs.1,00,000/-
Total compensation awarded:	Rs.5,65,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

8.Challenging the said award, the claimants have filed the Civil Miscellaneous Appeal on the ground that the learned Tribunal ought to have fastened the liability on the second respondent company atleast by directing them to pay compensation to the claimants and recover the



C.M.A.(MD).No.260 of 2019

same from the owner of the tractor relying upon the judgment of the Hon'ble Apex Court in the case of ***Shivaraj v. Rajendra and another*** reported in ***2018(2) TNMAC 273***, which has held as follows:-

“Claimant travelling in tractor-whether as a gratuitous passenger or as a Coolie/Loader-Liability of Insurer-Tribunal, holding that claimant travelled as a Loader and insurance policy covered risk 1+4, held Insurer liable-High Court in appeal holding that Tractor insured only for agriculture purpose and not for carrying goods-that, presence of trailer not shown in any of documents-and that, tractor could accommodate only one person I.e. Driver-Therefore, since claimant travelled in Tractor as a passenger in breach of policy conditions, Insurer not liable to indemnify owner-Conclusion as arrived at by High Court, held, unexceptional-High Court ought to have directed insurer to pay and recover in consonance with view taken in Swaran Singh, Mangla Ram, Rani and Manuara Khatun.”

9.That apart, it was also submitted that the Tribunal ought to have awarded entire claim of Rs.7,00,000/-. Though the appellants/claimants have pleaded before this Court to fasten the liability on the second respondent directing the second respondent to pay and thereafter, recover



C.M.A.(MD).No.260 of 2019

from the first respondent relying upon the judgment of the Hon'ble Apex Court reported in **2018 (2) TNMAC 273**, time and again, it categorically held by the Hon'ble Apex Court that such a relief could be passed only by invoking Article 142 of the Constitution. It is only the Hon'ble Supreme Court of India, which could exercise the power under Section 142 of the Constitution and the High Court cannot resort to such exercise and pass orders to dispense justice to the parties. The said power is not vested with any other Court other than the Hon'ble Apex Court in the country.

10. In view of the same, this Court is not inclined to interfere with the order passed by the learned Tribunal and hence, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

22.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



WEB COPY



C.M.A.(MD).No.260 of 2019

L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Motor Accidents Claims Tribunal,
(Sub Judge), Uthamapalayam.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD)No.260 of 2019

22.12.2023