



C.M.A.(MD).No.578 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.578 of 2019

The Oriental Insurance Company Limited,
Through its Branch Manager,
Kovilpatti Nagar,
Kovilpatti Taluk,
Thoothukudi District.

... Appellant/
2nd Respondent

-vs-

1. Karuppayee
2. Pothiraj
3. Shankar
4. Mathiyalagan

... Respondents 1 to 4/
Petitioners 1 to 4

Subbammal (Died)

5. Kanagasabapathy

... 5th Respondent/
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the decree and judgment made in M.C.O.P.No.66 of 2013, dated 04.10.2018, on the file of the Motor Accidents Claims Tribunal-cum-Sub Judge, Sankarankovil.

For Appellant : Mr.A.Ilango

For Respondents : Mr.P.Krishnasamy – for R1 to R4
: No appearance – for R5



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J U D G M E N T

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The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal-cum-Sub Judge, Sankarankovil, made in M.C.O.P.No.66 of 2013 primarily on the ground of negligence.

2. According to the claimants, when the deceased was driving a two wheeler at about 11.45 a.m on 14.04.2013, the private bus belonging to the first respondent and insured with the second respondent came from the rear side and dashed against the two wheeler. In the said accident, the deceased sustained grievous injuries and later, succumbed to the said injuries. The claimants have prayed for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) towards compensation.

3. The owner of the private bus had remained ex-parte and the Insurance Company had filed a counter contending that the deceased was riding his two wheeler in a rash and negligent manner on the wrong side of the road and dashed against the bus which was stopped at Kallurani Bus Stop for alighting of the passengers. Only in the said accident, the deceased got



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sustained injuries and passed away. Therefore, there is no negligence on the part of the driver of the bus.

4. The Tribunal, after considering the oral evidence of the pillion rider of the two wheeler, in which, the deceased had travelled and also Ex.P3, Ex. P.4 and Ex.P.5, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the bus. The Tribunal has further found that the Insurance Company has not chosen to examine the Investigating Officer who registered the F.I.R in order to prove that Ex.P.1 was given by the complainant as PW.2.

5. After arriving at such a finding, the Tribunal proceeded to hold that the deceased was earning a sum of Rs.6,000/- (Rupees Six Thousand only) per month and added 25% towards future prospectus and arrived at monthly income of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) after deducting income tax. The Tribunal had deducted 1/4th towards personal expenses and applying the multiplier of “14”, arrived at a compensation under the head of loss of income at Rs.9,45,000/- (Rupees Nine Lakhs Forty Five Thousand only). A sum of Rs.40,000/- (Rupees Forty Thousand only) was awarded towards loss of consortium, a sum of Rs,15,000/- (Rupees Fifteen



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Thousand only) was awarded towards funeral expenses and a sum of Rs.15,000/- (Rupees Fifteen Thousand only) was awarded towards loss of estate. Totally, a sum of Rs.10,15,000/- (Rupees Ten Lakhs Fifteen Thousand only) was awarded. This award is under challenge in the present appeal.

6. According to the learned counsel appearing for the appellant, the deceased viz., Paramasivam was riding a two wheeler at the time of the accident and one Murugan was the pillion rider. Immediately after the accident, the driver of the two wheeler had passed away and the pillion rider was admitted to the hospital and in the hospital he has given a statement and based upon the statement, an FIR has been registered. As per the said FIR, the accident has taken place only due to the rash and negligent driving on the part of the deceased rider of the two wheeler. However, when he was examined before the Court has taken an “U” turn and contended that the accident has taken place only due to the rash and negligent driving on the part of the driver of the private bus. Hence, he contended that the claimants have not established the negligence on the part of the insured vehicle.

7. Per contra, the learned counsel appearing for the claimants have contended that the Tribunal has considered the entire oral and documentary



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evidence and has arrived at a finding that the claimants have established the negligence on the part of the driver of the first respondent and therefore, the award of the Tribunal does not call for any interference.

8. I have carefully considered the submissions made by the learned counsel on either side.

9. The specific case of the claimants is that the two wheeler in which the deceased was travelling was dashed against by the bus on the rear side. However, in the counter, it is contended by the Insurance Company that the two wheeler came on the wrong side of the road and dashed against the front side of the bus. The Motor Vehicle Inspector's Report under Ex.P-3 would clearly establish the fact that the rear side of the two wheeler has been damaged and therefore, the entire contention on the part of the second respondent/ appellant that they are not liable to pay the compensation, cannot be accepted. Therefore, the Tribunal was right in holding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the bus.



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10. As far as the quantum of award is concerned, there are four claimants out of which a sum of Rs.40,000/- (Rupees Forty Thousand only) has been awarded to the first claimant towards loss of consortium. The claimants 2 to 4 are the sons of the deceased Paramasivam. However, no amount has been awarded to them towards loss of love and affection. This Court is inclined to award a sum of Rs.40,000/- (Rupees Forty Thousand only) to each of the claimants 2 to 4 herein. The fifth claimant viz., the mother of the deceased had passed away. Hence, Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only) is awarded under the head of loss of love and affection to the claimants 2 to 4 herein. In other respects, the award of the Tribunal is hereby confirmed.

11. In view of the above said deliberations, the award of the Tribunal is modified as follows:

Loss of Income	: Rs.9,45,000/-
Loss of consortium (1 st claimant)	: Rs. 40,000/-
Loss of Love and Affection (Rs.40,000 x 3)	: Rs.1,20,000/-
Funeral Expenses	:Rs. 15,000/-
Loss of Estate	: <u>Rs. 15,000/-</u>
Total	: Rs.11,35,000/-



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12. The total award of the Tribunal viz., Rs.10,15,000/- (Rupees Ten Lakhs and Fifteen Thousand only) is hereby enhanced to Rs.11,35,000/- (Rupees Eleven Lakhs and Thirty Five Thousand only). The entire award amount will carry interest at the rate of 7.5% per annum from the date of claim petition. The Insurance Company is directed to deposit the enhanced amount within a period of eight weeks from the date of receipt of a copy of this order. The claimants are hereby directed to pay the deficit Court fee, if any, before drafting of the decree.

13. With the above said observations, this Civil Miscellaneous Appeal stands disposed of to the extent as stated above. There shall be no order as to costs.

20.06.2023

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

1. The Motor Accidents Claims Tribunal-cum-Sub Judge,
Sankarankovil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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