



C.M.A(MD)Nos.605 and 607 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 25.07.2023

Pronounced On : 11.08.2023

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)Nos.605 and 607 of 2019

and

C.M.P.(MD)Nos.7417 and 7418 of 2019

M/s.United India Insurance Company Limited,
through its Branch Manager,
Office at Number 457,
Victoria Extension Road,
Tuticorin.

: Appellant / 2nd Respondent
(in both appeals)

Vs.

1.Minor Augustus

: 1st Respondent/ Petitioner
(in both appeals)

2.Chithambaram

: 2nd Respondent/1st Respondent
(in both appeals)

(Minor R1 is declared as major and the guardianship of his maternal uncle and next friend and guardian Dhanasingh is discharged vide Court order dated 07.07.2023 made in CMP(MD)Nos.6607 and 6618 of 2023 in CMA(MD)No.605 of 2019)

PRAYER in CMA(MD)No.605 of 2019 :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the



C.M.A(MD)Nos.605 and 607 of 2019

judgment and decree order dated 28.04.2018 made in M.C.O.P.No.1402 of 2015 on the file of the Motor Accident Claims/Special Sub Judge, Tirunelveli.

PRAYER in CMA(MD)No.607 of 2019 :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree order dated 28.04.2018 made in M.C.O.P.No.1403 of 2015 on the file of the Motor Accident Claims/Special Sub Judge, Tirunelveli.

(in both appeals)

For Appellant : Mr.C.Karthik

For Respondents : Mr.M.S.Suresh Kumar, for R1.

: No Appearance, for R2.

COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the awards passed in M.C.O.P.Nos.1402 and 1403 of 2015, dated 24.08.2018 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Tirunelveli.

2. The first respondent/claimant has laid five claim petitions in M.C.O.P.Nos.1401 to 1405 of 2015 (M.C.O.P.Nos.1373 of 2015 to 1377 of



2015) on the file of the Principal District Court, Tirunelveli, claiming compensation for the death of his parents, brother and sister and also compensation for the disability suffered by him in the accident occurred on 04.06.2015. The Tribunal, after conducting joint enquiry, has passed a common award, granting compensation of Rs.13,74,000/- in M.C.O.P. No.1401/2015; Rs.8,10,000/- in M.C.O.P.No.1402/2015; Rs.8,10,000/- in M.C.O.P.No.1403/2015; Rs.11,22,000/- in M.C.O.P. No.1404/2015 and Rs.2,50,000/- in M.C.O.P.No.1405/2015. Aggrieved by the awards passed in M.C.O.P.No.1402 and 1403 of 2015, the insurer has preferred the present appeals.

3. Admittedly, the claimant was a minor at the time of accident and at the time of laying the above claim petitions. It is not in dispute that the petitioner's brother and sister, for whose death, compensation was claimed in the above petitions, were also minors at that time.

4. The learned counsel for the appellant would submit that the above two claim petitions for the loss of life of petitioner's sister and brother are legally not maintainable on the ground that the minor claimant was not a dependant on his deceased minor brother and sister.



5. During trial, one Dhanasing, who is the maternal uncle of the claimant, was examined as P.W.1 and 25 documents were exhibited as Ex.P.1 to Ex.P.25. The appellant/insurer has adduced neither oral nor documentary evidence.

6. No doubt, as rightly pointed by the learned counsel for the appellant, the parents can claim compensation for the death of their minor children. But, as rightly pointed out by the learned counsel for the appellant, in the case on hand, both the claimant as well as the deceased are minors. The Tribunal by taking notional annual income of the deceased minors at Rs.60,000/-, has granted a sum of Rs.7,80,000/- each for loss of dependency and further added Rs.30,000/- under the conventional heads towards funeral expenses and loss of estate, totalling Rs.8,10,000/- each in the above two cases.

7. The only point that arises for consideration is, as to whether the impugned award passed in M.C.O.P.Nos.1402 and 1403 of 2015, dated 24.08.2018, are liable to be interfered with ?.



8. The learned counsel for the appellant would submit that the brother of the deceased is not entitled to get any compensation as he is not a dependant on the deceased brother and sister and relied on the decision of the Hon'ble Division Bench of this Court in ***New India Assurance Company Limited Vs. D.Neela*** reported in ***2018(2) TN MAC 760 (DB)*** and the relevant passages are extracted hereunder :

“19. We have already recorded that the parents of the deceased are no more. The 1st respondent is the wife and respondents 6 to 8 are the brothers of the deceased. There is nothing on record to show that the brothers of the deceased were dependant on him. However, the parents of the deceased had died after the accident, therefore they would be entitled to a certain amount as compensation if they were alive.

20. The award of the compensation under the Motor Vehicles Act cannot be strictly governed by the Rules of Succession under the , as Hindu Succession Act the same relates to the dependency. As per the interim order of this Court dated 12.04.2016, the Insurance Company has been directed to pay a sum of Rs.75,00,000/- to the 1st respondent and Rs.25,00,000/- to the deceased 5th respondent. As already stated that there is nothing on record to show that the brothers, namely the respondents 6, 7, & 8 were dependants on the deceased. The father even during his lifetime has been paid a sum of Rs. 25,00,000/- towards his share of the compensation. We, therefore, conclude that the brothers, viz. the respondents 6, 7



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and 8 are not entitled to any share in the compensation that remains to be paid.”

9. In a similar case, one minor boy has filed three claim applications, claiming compensation for the death of his father, mother and brother and the Tribunal has passed a common award granting compensation in all three cases and awarded total compensation of Rs.1 lakh for the claimant for the death of his minor brother. Aggrieved by the same, the claimant as well as the insurer has filed three appeals each in ***MFA No.104649 to 104651 of 2018***, before the ***Dharwad Bench of Karnataka*** and a Division bench of Karnataka High Court by observing that the question of claimant being dependant on his younger brother does not arise, confirmed the award granting global compensation of Rs.1 lakh in favour of the claimant and the relevant passage is extracted hereunder :

“ 24. The petitioner has lost his brother, who is aged about 5 years at the time of accident. The question of the petitioner being dependant on his younger brother does not arise. The tribunal has granted a global compensation of Rs.1,00,000/- in favour of the petitioner. No grounds has made by either of the parties as to why the same needs to be changed. Accordingly, the compensation awarded by the tribunal is not altered.”



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The legal position above referred, is squarely applicable to the case on hand.

10. In the case on hand also, the question of minor claimant being dependant on his minor brother and sister does not arise at all. The Tribunal, without considering the above aspects in proper perspective, has mechanically granted compensation in the above two cases. Hence, this Court has no hesitation to hold that the impugned awards granting compensation of Rs.8,10,000/- for each case, are legally unsustainable and the same are liable to be interfered with.

11. But at the same time, considering the fact that the claimant has lost his entire family including his brother and sister, this Court is inclined to grant a lumpsum compensation of Rs.1 lakh, for each case for loss of love and affection. Since the Tribunal has already granted reasonable amounts under the conventional heads in the other two cases, the question of granting compensation again under the conventional heads does not arise at all.



C.M.A(MD)Nos.605 and 607 of 2019

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12. In the result, these Civil Miscellaneous Appeals are partly allowed and the impugned awards dated 28.04.2018 made in M.C.O.P. Nos.1402 and 1403 of 2015 on the file of the Motor Accident Claims/Special Sub Judge, Tirunelveli., are set aside and the compensation awarded by the tribunal is reduced from Rs.8,10,000/- to Rs.1,00,000/- in each case. The Appellant/Insurer is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and also permitted to withdraw the excess amount, if any, and on such deposit, the claimant is permitted to withdraw the award amount with accrued interest and costs, less the amount already withdrawn, if any, on due application before the Tribunal. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

11.08.2023

NCC : Yes / No
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C.M.A(MD)Nos.605 and 607 of 2019

To

- 1.The Motor Accident Claims/Special Sub Judge,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)Nos.605 and 607 of 2019

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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and
C.M.P.(MD)Nos.7417 and 7418 of 2019

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