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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.217 OF 2021

and

C.M.P(MD)No.1841 of 2021

M/s.Oriental Insurance Company Limited,
through its Branch Manager,
CBO-I, No.39/40, Saratha Shopping Complex,
Simmakkal,
Madurai – 625 011. :Appellant/Second Respondent

.VS.

1.R.Venkatesan

2.V.Veni

3.V.Yogaraj

4.V.Yogeswari :Respondents 1 to 4/Petitioners 1 to 4

5.M.Thangaraj : 5th Respondent/Ist Respondent

((5th respondent remained ex-parte before the lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.C.O.P.NO.629 of 2017, dated 2.9.2020, on the file of the Motor Accidents Claims Tribunal-cum- Special District Judge, Madurai.

For Appellant :Mr.C.Karthick

For Respondents :Mr.C.Vakeeswaran
1 to 4



For Respondent-5 :No appearance

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JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company challenging the liability to pay the compensation.

2.The respondents 1 to 4/ claimants have filed M.C.O.P.No. 629 of 2017 seeking compensation of Rs.30 lakhs for the death of Mohanraj. The claimants are the parents and the siblings of the deceased. It is stated in the claim petition that on 6.9.2017, at about 9.00 am., the deceased was riding his two-wheeler bearing Registration No. TN 58 R 8409, wearing helmet from his home to Sethu Engineering College, Kariapatti. When he was going opposite to Kamatchi Amman Hotel on the left side of the road in Madurai-Avaniapuram Road, a water supply tractor bearing Registration No. TN 55 AZ 0712 connected with Trailer bearing Registration No. TN 59 BK 5054, came in a rash and negligent manner, the tractor driver while trying to overtake the motor cycle, hit the motor cycle. As a result, the deceased fell down and sustained fatal injuries. The deceased was aged 21 years at the time of accident and he was studying Bachelor of Engineering 4th year. The claimants have a



great expectation on the deceased to support the family and due to sudden demise of the deceased in the accident, the claimants have lost the moral and financial support of the deceased. Thus the claim petition.

3.The second respondent/claimant filed a counter affidavit challenging the manner in which the accident had happened. He stated that tractor driver was responsible for the accident. It is generally denied the allegations made in the Petition with regard to the manner in which the accident had happened. The compensation claimed is excessive.

4.During enquiry before the Tribunal, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P70 were marked. R.W.1 was examined and Ex.X1 was marked. On the basis of the oral and documentary evidence, the learned Tribunal awarded a sum of Rs.23,38,000/- as compensation, which is as follows:

1.Loss of dependency	- Rs.22,68,000/-
2.Funeral expenses	- Rs. 15,000/-
3.Transport Expenses	- Rs. 15,000/-
4.Loss of filial consortium	-Rs. 40,000/-(Ist and 2 nd Petitioners)

total	Rs.23,68,000

Challenging the award passed by the Tribunal, this Civil



Miscellaneous Appeal is filed.

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5.The learned counsel for the appellant submitted that the deceased had no driving license at the time of accident and he was not wearing helmet at the time of accident and that he was responsible and contributed to the accident. Therefore the compensation awarded is not in accordance with law.

6.In reply to the submission, the learned counsel for the respondents 1 to 4/claimants submitted that there is no specific pleading in the counter with regard to the submission that the deceased had no driving license; he was not wearing helmet and he was responsible for the accident. It is further submitted that the deceased had valid driving license at the time of accident and it was marked as Ex.P9. The Tribunal, on proper appreciation of oral and documentary evidence, had rightly awarded the compensation. Thus he prayed for the dismissal of this Civil Miscellaneous Appeal.

7.This Court considered the rival submissions made on either side and perused the materials placed before this Court.

8.On going through the counter affidavit of the second



respondent/appellant, this Court finds that there is no specific pleadings in the counter affidavit stating that the deceased had no driving license; he was not wearing helmet and that the deceased was responsible for the accident and contributed to the accident. In the absence of pleadings, no amount of evidence can be looked into. Even otherwise, the learned Tribunal on the basis of oral and documentary evidence, considered these aspects and answered them in negative. It is found from the evidence of P.W.2 that the accident had happened because of the rash and negligent driving of the driver of the first respondent. That was not effectively challenged by eliciting answer to disbelieve the evidence of P.W. 2. Therefore the learned Tribunal had rejected the contention raised on behalf of the Insurance Company that the deceased was not wearing helmet and he was responsible for the accident. As pointed out by the learned counsel for the appellant and the finding recorded by the Tribunal that Ex.P9 shows that the deceased had valid driving license at the time of accident. Therefore, this Court finds no reason to interfere with the finding of fact recorded by the Tribunal with regard to the manner in which the accident had happened. It is clearly proved that the accident had happened because of the rash and negligent driving of the first respondent vehicle. The deceased was studying Bachelor of Engineering fourth



year in Electronics and Instrumentation Engineering. Considering the nature of the course studied by him, there is every possibility that he would have earned handsome salary he had been alive and would have certainly supported the claimants. Therefore the quantum of compensation awarded by the Tribunal at Rs. 23,38,000/-, in the considered view of this Court, is just and appropriate.

9.In fine, this Court does not find any reason to interfere with the findings of the Tribunal fastening the liability on the Insurance Company and awarding the above said compensation.

10.In the result, this Civil Miscellaneous Appeal is dismissed confirming the Judgment made in M.C.O.P.NO.629 of 2017, dated 2.9.2020, on the file of the Motor Accidents Claims Tribunal-cum-Special District Judge, Madurai. It is represented by the learned counsel for the appellant/Insurance Company that the entire award amount, as awarded by the Tribunal has already been deposited to the credit of the claim petition. Therefore, the claimants 1 to 4/respondents 1 to 4 are permitted withdraw their share in the award amount with proportionate accrued interest and costs, as apportioned by the Tribunal, less the award amount if any already



withdrawn, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Special District Judge,
(The Motor Accidents Claims Tribunal)
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madras.



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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)NO.217 OF 2021
and
C.M.P(MD)No.1841 of 2021**

19.12.2023