



C.M.A.(MD)No.614 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.02.2023

Delivered On : 15.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.614 of 2019

1.Rajendran
2.Ramu
3.Narayanan
4.Anbu

.. Appellants

Vs.

1.S.Marimuthu
2.United India Insurance Company Ltd.,
23E, E.V.R. Road, Puthur,
Trichy – 620 017.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.336 of 2012 dated 27.02.2019 on the file of the Motor Accident Claims Tribunal Subordinate Judge, Kulithalai.

For Appellants	: Mr.D.Boopal
For 2 nd Respondent	: Mr.B.Rajesh Saravanan
For 1 st Respondent	: No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.336 of 2012 dated 27.02.2019, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kulithalai.

2.The appellant herein is the petitioners and the respondent herein is the respondents in the claim petition. The appellants herein have filed a claim petition in M.C.O.P.No.336 of 2012, claiming compensation for the death of one Velambal, in an accident that took place on 17.12.2011. The Tribunal rejected the claim petition. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.336 of 2012 is as follows:

On 17.12.2011 at about 02.00 p.m., when the deceased Velambal was travelling in a two wheeler bearing registration No.TN-37-Q-8447 as a pillion rider, another two wheeler bearing registration No.TN-47-X-2011 came from the opposite direction in a rash and negligent manner and dashed against the deceased. The first petitioner and the deceased sustained injuries and they were taken to Trichy Government Hospital and thereby, the deceased died. The deceased was an



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agriculturist and he was earning Rs.2,00,000/- (Rupees Two Lakhs only) per annum and by working as an agriculture coolie, she was earning Rs.7,000/- (Rupees Seven Thousand only) per month. The petitioners are her dependants and they claimed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation.

4.Brief substance of the counter filed by the first respondent therein is as follows:

The age, profession, income, place of accident, date and time of accident are all denied. The manner of the accident as narrated in the petition is wrong. The deceased was having some physical ailments. It was the rider of the two wheeler in which the deceased travelled, drove the vehicle in a rash and negligent manner and dashed against the first respondent vehicle. The first respondent was acquitted by the criminal Court. The owner and the insurance company of the vehicle in which the deceased travelled, are also necessary parties to the case.

5.Brief substance of the counter filed by the second respondent therein is as follows:

The first respondent is not responsible for the accident. The manner of the accident as narrated in the petition is wrong. The first respondent was acquitted by the criminal Court in C.C.No.56 of 2012 on 28.08.2012. The age, income and



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profession of the deceased are all denied. The claim is excessive. The vehicle of the first respondent was not insured with this respondent. The rider of the first respondent vehicle was not having valid driving licence.

6.On the side of the petitioners, one witness was examined and three documents were marked. On the side of the respondents therein, two witnesses were examined and one document was marked and one witness document was marked. After trial, the Tribunal rejected the claim petition. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:-

The Tribunal failed to consider the evidence and the document in the proper perspective. The Tribunal failed to consider that the appellants are the surviving legal heirs. The lower Court is wrong in dismissing the petition for non joinder of necessary parties. The Tribunal failed to consider that the other two legal heirs I.e., Pannerselvam and Dhiravidaselvam were already died. Merely on the basis of Ex.P3, the Tribunal dismissed the claim petition, which is wrong.

7.On the side of appellants, it is stated that two sons of the deceased were not impleaded in the case, since they pre-deceased the deceased. The claimants were Laymen and they failed to mark the death certificate and the legal heirship certificate. One of the legal heir Pannerselvam died on 22.08.1999 and another legal



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heir Dhiravidaselvam died on 28.11.2011. Both of them pre-deceased the victim of the accident. Only on this technical ground, the Tribunal dismissed the petition. The Tribunal failed to consider that the provisions under the Motor Vehicle Accident Claim themselves is a welfare legislation. The appellants are ready to implead the other legal heirs.

8.On the side of the respondents, it is stated that only two of the legal heirs are added as parties. The appellants are not entitled to claim compensation till the other legal heirs are impleaded.

9.A perusal of the records reveals that the legal heir certificate of the deceased was not at all marked as a document. The Tribunal has taken up this point as the first issue. In Ex.P3, it was stated that there were two more sons for the deceased. Only on that background, the Tribunal has dismissed the claim petition.

10.The Tribunal has not discussed anything about the other aspects of the claim petition. Hence, the appeal is to be remanded back to the Tribunal. The appellant is directed to implead all the legal heirs of the deceased within a period of two months from the date of remand. The Tribunal is directed to give sufficient opportunity for both sides and to dispose of the case on merits.



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R. THARANI, J.

MRN

11.With the above direction, this Civil Miscellaneous Appeal is **allowed**.

The award of the Tribunal passed in M.C.O.P.No.336 of 2012 is set aside. The case is remanded back to the Tribunal for fresh trial and for disposal in accordance with law. No Costs.

15.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
MRN

To

1.The Motor Accidents Claims Tribunal, Additional District and Sessions Judge,
Theni, Periyakulam.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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