



C.M.A.(MD)No.44 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.44 of 2021
and
C.M.P.(MD)No.5981 of 2021

The Manager,
National Insurance Company Ltd.,
Bharathiyar Salai,
Trichy.

...Appellant/2nd Respondent

Vs.

1.A.Deivanai
2.A.Chitra
3.A.Murugesan
4.R.Prabhukrishnan

...Respondents 1-3 /Petitioners
...4th Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 30.09.2019 passed in M.C.O.P.No.49 of 2019 by the Motor Accident Claims Tribunal, Additional District Court, Karur.

For Appellant	: Mr.A.S.Mathilagan
For R1 to R3	: Mr.S.Deenadhayalan
For R4	: No Appearance



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JUDGMENT

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This Civil Miscellaneous Appeal is filed challenging the compensation awarded by the Motor Accident Claims Tribunal /Additional District Court, Karur in M.C.O.P.No.49 of 2019 dated 30.09.2019.

2.For the sake of convenience, the parties herein are referred to as per their rank before the Tribunal.

3.The brief facts, leading to the filing of the claim petition, are as follows:-

(i) on 08.01.2015, the deceased travelled as a pillion rider in a motorcycle bearing Registration No.TN-45-A.W.8640. The driver of the said motorcycle cycle drove the same in a rash and negligent manner and applied break suddenly, due to which the deceased was thrown away from the motorcycle and sustained serious injuries. He was immediately taken to the nearby hospital. Thereafter, he was shifted to the Rajaji Hospital, Madurai and he succumbed to injuries on 24.01.2015.



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(ii)the first petitioner is the wife of the deceased. The second and third petitioners are the children of the deceased. The deceased was working as a Tailor and he was earning a sum of Rs.10,000/- per month. Hence, the claim petition was filed.

(ii)The second respondent /Insurance Company before the Tribunal contended that the accident was not occurred as stated by the claimants. It is a hit and run case. Further, FIR has been filed with a delay of 4 days.

4. Before the tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondents R.W.1 to R.W.3 were examined and Ex.R1 and Ex.R2 were marked.

5.The Tribunal considering the oral and documentary evidence adduced on either side, awarded the compensation as follows:

S.No.	Head of Compensation	Award amount
1.	Loss of income	Rs.10,08,000/-
2.	Loss of Consortium	Rs. 40,000/-
3.	Loss of love and affection	Rs. 1,50,000/-



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4.	Loss of belongings	Rs. 15,000/-
5.	Funeral expenses	Rs. 15,000/-
	Total	Rs.12,28,000/-

Challenging the same, the present Civil Miscellaneous Appeal is filed by the Insurance Company.

6.The learned counsel for the appellant submitted that the the accident has not been established and the FIR was also registered with a delay of 4 days. The rider of the motorcycle has not given any evidence, whereas he claimed compensation as the legal heir of the deceased. He further contended that the alleged fall of the deceased from the motorcycle is invented only for the purpose of claiming compensation.

7.The learned counsel for the respondents would submit that the Insurance Company except denying the accident, has not discharged the burden of proof. Mere pleading alone is not sufficient to substantiate the stand of the appellants. He would further submit that merely on the basis of the entries in the AR copy that the deceased was admitted in the hospital by Ambulance, the entire accident cannot be disbelieved. Hence, he opposes this appeal.



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8. In view of the above submission, now the points arise for consideration in this appeal are:

1. Whether the accident is not taken place as stated by the claimants?;

and

2. Whether the Tribunal is right in awarding the compensation?

9. Admittedly, the Insurance Policy is not disputed. The only ground on which the liability is disputed by the appellant is that no accident was occurred as stated by the claimants. It is relevant to note that the deceased died after several days from the date of accident. The Accident Registrar clearly shows that the deceased was immediately shifted to the hospital by Ambulance and thereafter, he was shifted to the Rajaji Hospital, Madurai. Admittedly, there is no doubt that FIR had been filed with the delay of 4 days.

10. The Insurance Company comes up with a plea that there was no such accident. This Court is of the view that merely because there is a delay in filing FIR, it cannot be presumed that there was no such accident. It is relevant to note that if really there is no such accident and it is a hit and run case as pleaded by the



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appellant, the appellant ought to have proved the same. The appellant could have examined the Ambulance driver, who admitted the deceased in the hospital to substantiate the case. But no such steps whatsoever have been taken by the appellant to examine the driver of the Ambulance. That apart, the appellant did not take steps to examine the Investigation Officer, who had proceeded the investigation in this matter.

11.Further, merely because the son of the deceased had not lodged a complaint immediately, the Court cannot come to the conclusion that there was no such accident. It is relevant to note that the deceased sustained injuries and fell unconscious and then he was shifted to the hospital. Thereafter, he was shifted to the Rajaji Hospital, Madurai. Therefore, the family members normally would be in the state of shock and they were accompanying the deceased in the hospital. In such situation, it is highly impossible to expect the family members to lodge a complaint. Therefore, mere non filing of FIR by the family members cannot be taken advantage by the Insurance Company. When the Insurance Company pleads that there was no such accident, the burden lies on them to prove the same, but the Insurance Company had not even examined the Ambulance driver and investigation officer to substantiate the same. In such view of the matter, the



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contention of the learned counsel for the appellant, without any evidence, at this stage cannot be countenanced.

12.Perusal of the award passed by the Tribunal makes it clear that the Tribunal had considered the evidence of P.W.1 and P.W.2 and held that the deceased fell from the motorcycle that was ridden by the son of the deceased. The deceased was aged about 45 years at the relevant point of time. Hence, the Tribunal fixed the notional income of the deceased at Rs.9,000/- and deducted 1/3 of income towards his personal expenses and applied '14' multiplier and awarded the compensation as stated above.

13.Such view of the matter, I do not find any merits in this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed.

14.The appellant/Insurance Company is directed to deposit the entire compensation amount as awarded by the Tribunal with accrued interest and costs to the credit of M.C.O.P.No.49 of 2019, on the file of the Motor Accident Claims Tribunal / Additional District Court, Karur within a period of one month from the date of receipt of copy of this judgment, less the amount, if any already deposited.



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On such deposit, the claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

19.04.2023

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

- 1.The Motor Accident Claims Tribunal,
Additional District Court, Karur
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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