



C.M.A.(MD).No.66 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 22.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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and

C.M.P.(MD)No.1023 of 2018

The New India Assurance Company Limited,
Represented by its Divisional Manager,
Divisional Office,
1st Floor, Pillars Gate,
Opp. To Anna Stadium,
Balamore Road, Nagercoil,
Kanyakumari District

... Appellant

Vs.

1.C.Rajakani
2.M.R.Maheswaran
3.M.R.Subash
4.S.Chellammal
5.M.John

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.73 of 2015 dated 09.08.2017, on the file



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of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court,
Nagercoil.

For Appellant : Mr.J.S.Murali
For Respondents 1 to 4 : Mr.N.Sudhagar Nagaraj
For 5th Respondent : Mr.S.Louis

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/insurance company, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal, Chief Judicial Magistrate, at Nagercoil in M.C.O.P.No.73 of 2015 dated 09.08.2017.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.73 of 2015.

3.The factual matrix of the present case, briefly stated, are as under:-

The deceased was an owner cum seller of a provision stores at the junction of Eathamozhi in Kanyakumari District and he earned not less than Rs.25,000/- per month. He was doing business for thirty two years.

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The first petitioner is the wife of the deceased, the second petitioner is the elder son of the deceased, the third petitioner is the second son of the deceased and the fourth petitioner is the mother who is a senior citizen. On 20.03.2015 at about 18.45 hours, at Eathamozhi Rajakkamangalam Main Road, at Vadakku Valiavilai, an auto bearing registration No.TN-75-R-7850 was driven by the first respondent in a rash and negligent manner from the opposite direction and the same dashed against the deceased, who came in a bicycle and caused multiple fatal injuries. Immediately after the accident, the deceased was taken to Siva hospital, Eathamozhi for first aid and thereafter, he was admitted in Dr.Jeyasekharan hospital, K.P.Road, Nagercoil wherein he was given treatment for five hours. Since his condition became critical, further he was taken to Ananthapuri Hospitals and Research Institute, Thiruvananthapuram for better treatment and was admitted on 21.03.2015. Though a team of doctors headed by Dr.A.Marthanda Pillai took himalayan efforts to save the live of the deceased, he passed away on 30.05.2015. Thus, the deceased was treated totally for 72 days. The deceased was 55 years old at the time of accident. The accident occurred solely due to the rash and negligent driving of the first respondent. The



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offending vehicle, auto was duly insured with insurer of the vehicle, the second respondent.

4.The petitioners who are the dependants of the deceased, filed a claim petition in M.C.O.P.No.73 of 2015 under Section 166 of Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Kanyakumari praying for a compensation of Rs.35,00,000/- along with interest from the date of accident till the date of realization.

5.Three witnesses were examined and 24 documents were marked on the side of the petitioners and two witnesses were examined and five documents were marked on the side of the respondents.

6.Though the respondents refuted the allegations put forth by the petitioners/claimants by categorically submitting that the manner of the accident stated by the petitioners was not correct, the Motor Accident Claims Tribunal after considering the evidence placed on record, came to the finding that the accident took place only by the rash and negligent



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driving of the first respondent. On the basis of the various medical bills and other supporting documents produced by the petitioners, the learned Tribunal awarded total amount of Rs.20,47,000/- to the petitioners as compensation as follows:-

Head	Compensation awarded
(i)Income:	Rs.10,000/- per year
(ii)Future Prospects:	Rs.11,500/- [10,000 +1,500(15% of monthly income)]
(ii)Multiplier:	11 (as per the age of the deceased)
(iii)Loss of future income:	Rs.15,18,000/- [I.e.Rs.11,500x12x11]
(iv)Deduct Personal expenses:	Rs.10,12,000/- [Rs. 15,18,000-5,06,000 (1/3 rd of his income can be deducted)]
(v)Spousal Consortium:	Rs.1,00,000/-
(vi)Filial Consortium:	Rs.1,00,000/-+Rs.1,00,000/-
(vii)Loss of love and affection for mother:	Rs.50,000/-
(viii)Medical Expenditure:	Rs.6,50,000/-
(ix)Transportation charges and attendant charges:	Rs.10,000/-
(x)Funeral expenses:	Rs.25,000/-
Total compensation awarded:	Rs.20,47,000/- with interest @ 7.5 % from the date of the claim petition until the realization and costs.



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7.Challenging the said award, the appellant/New India Insurance Company has filed the Civil Miscellaneous Appeal on the ground that the learned Tribunal erred in considering 15% of notional monthly income towards future prospects and ought to have fixed the notional monthly income of the deceased as Rs.6,500/- instead of Rs.10,000/-. It was further insisted at the time of arguments that the first respondent driver drove the insured vehicle without badge and hence, the learned Tribunal ought to have passed an award directing the second respondent to pay and recover from the first respondent.

8.Per contra the learned counsel for the respondents vehemently submitted that since the auto is not a heavy vehicle requiring badge such an argument putforth by the appellant cannot be sustained. He relied on the judgment of the Hon'ble Apex Court in the case of ***Mukund Dewangan v. Oriental Insurance Company Limited*** reported in ***AIR 2017 SC 3668***, wherein it is held that “*Light Motor Vehicle includes transport vehicle also. A holder of Light Motor Vehicle licence can drive all the vehicles of class including transport vehicles or omnibus. The gross vehicle weight of either of which does not exceed 7500 kgs. would*



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be a Light Motor Vehicle and also a motor car or tractor or a road roller, the unladen weight of which does not exceed 7500 kgs and holder of driving licence to drive class of Light Motor Vehicle is competent to drive a Transport Vehicle or Omnibus, the gross vehicle of which does not exceed 7500 kgs.”

9.In view of the same, I have no hesitation to observe that the first respondent who had a licence to drive Light Motor Vehicle do not need any badge for the purpose of driving the insured vehicle I.e. Auto. Hence, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Nagercoil.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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