



C.M.A. (MD)No.313 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.12.2023

PRONOUNCED ON : 22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.(MD)No.313 of 2021

and

Cros.Obj.(MD)No.21 of 2021

and

C.M.P.(MD)No.2581 of 2021 and 9155 of 2022

1.The District Adi Dravidar Welfare Officer,
Virudhunagar District, Virudhunagar.

2.The District Collector,
Virudhunagr District,
Virudhunagar.

...Appellants/Respondents

Vs.

1.Rajeswari

2.Minor Vanmathi

3.Rohini

...Respondents

[minor is represented by her mother and guardian first respondent]

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 30.08.2019 passed in M.C.O.P.No.63 of 2011 on the file of the Motor Accident Claims Tribunal cum Additional District Judge, Virudhuangar.



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CROSS OBJECTION (MD)No.21 of 2021:

1.Rajeswari

2.Minor Vanmathi

...Cross objectors/Respondents/Petitioners

[minor is represented by her mother and guardian first respondent]

vs.

1.The District Adi Dravidar Welfare Officer,
Virudhunagar District,
Virudhunagar.

2.The District Collector,
Virudhunagr District,
Virudhunagar.
Deenam (died)

3.Rohini

...Respondents

PRAYER: This Cross Objection is filed under Section 41 Rule 22 (1) of the Civil Procedure Code, against M.C.O.P.No.63 of 2011 on the file of the Motor Accident Claims Tribunal Cum Additional District Judge, Virudhunagar dated 30.08.2019.

In C.M.A.(MD)No.313 of 2021:

For Appellants : Mr.D.Gandhi Raj
Special Government Pleader

For R1 and R2 : Mr.V.Sasikumar



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In Cross.Obj.(MD)No.21 of 2021:

For Cross Objectors : Mr.V.Sasikumar
For R1 and R2 : Mr.D.Gandhi Raj
Special Government Pleader

COMMON JUDGMENT

[Judgment of the Court was delivered by ***RMT.TEEKAA RAMAN, J***]

This civil miscellaneous appeal and the cross objection have been filed challenging the award passed in M.C.O.P.No.63 of 2011 by the District Adi Dravidar Welfare Officer and the District Collector, Virudhunagar District and the claimants, respectively.

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

3.The claimants are the wife, minor daughter and the mother of the deceased, namely Venkatesh. They initially filed M.C.O.P.No.77 of 2011 before the Motor Accident Claims Tribunal, Sub Court, Virudhunagar and the same was transferred to the Motor Accident Claims Tribunal, Additional District Judge,



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Virudhunagar and renumbered as O.S.No.63 of 2011. The claimants in the claim petition have claimed that the husband of the first claimant sustained injuries in the accident that had happened on 10.10.2006 and died on 05.12.2009 due to the accidental injuries.

4.In the counter statement filed by the owner of the vehicle, namely the Adi Dravidar Welfare Officer and the District Collector of Virudhunagar District, it is specifically stated that the vehicle bearing Registration No.TDR2835 is a Government vehicle. At the time of accident the first respondent's driver driven his vehicle at a moderate speed duly observing the traffic rules of the road from west to east. The place of the accident is nearby over-bridge, Aruppukottai Road. In the over-bridge area, the vehicle cannot be driven in a rash and negligent manner. When the first respondent's driver driven his vehicle slowly, the deceased riding his two-wheeler in a rash and negligent manner and suddenly crossed the road without giving any signals in order to go to the over-bridge and dashed with the first respondent's vehicle. The deceased himself invited the accident. This accident happened solely due to the negligence of the deceased.



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5.Before the trial Court, the widow of the deceased was examined as P.W.1 and another person was examined as P.W.2. The eye witness to the occurrence namely Manikandan was examined as P.W.3. The doctor, namely S.Satheeshkumar, was examined as P.W.4. The employee of the Appollo Hospital was examined as P.W.5, and Ex.P1 to Ex.P29 were marked. On the side of the Government, the driver of the Government was examined as R.W.1 and his license was marked as Ex.R1.

6.Based upon the death of the oral and documentary evidence adduced before the Tribunal, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the Driver of the appellant jeep and treated the case as a fatal case and granted the compensation of Rs.31,41,800/- as compensation. Hence, the present appeal has been filed by the Government challenging the said award and seeking enhancement of the compensation awarded by the Tribunal, the claimants have filed the Cross Objection.

7.The learned Special Government Pleader appearing on behalf of the Government would contend that the date of accident is 10.10.2006 and the injured



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died only on 05.12.2009. Further, the deceased did not die due to the accidental injuries. He relied upon the evidence of the Doctor, who was examined during the first round of litigation and the proceedings of the learned Judicial Magistrate in C.C.No.118 of 2007 to substantiate his contention.

8.Per contra, the learned counsel for the claimants made a submission that the deceased died due to the injuries sustained in the accident and the claimants have filed cross objection with regard to the disallowed portion of compensation by the Motor Accident Claims Tribunal and prayed for enhancing compensation.

9.Heard the learned counsel appearing on either side on both points of negligence and quantum of compensation and perused the materials placed on record.

10.It is to be noted that on the earlier occasion, M.C.O.P.No.63 of 2011 was allowed and the award was also passed on 17.06.2004. The Government, challenging the said award, had filed C.M.A.(MD)No.737 of 2015. This Court by judgment dated 14.11.2017 set aside award and remitted the claim petition back to



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the Tribunal for consideration as to whether the medical bills produced by the claimants are genuine in nature. Thereafter, the learned Additional District Judge, Virudhnagar by an order dated 30.08.2019 allowed the claim petition and granted the compensation of Rs.31,41,800/-, which is challenged in this appeal and the cross objection.

11.The third respondent in the original claim petition, father of the deceased, died on 10.02.2009 during the pendency of the first round of litigation and the same is also recorded.

12.On perusal of the evidence of P.W.5, Om Prabhu and P.W.3, Manikandan, it is seen that the accident had taken place due to the rash and negligent driving of the driver of the Government jeep. The learned Special Government Pleader brought to our attention to the evidence of R.W.1, Driver of the jeep. During the enquiry, after remand, the claimants have chosen to file only the driving license of the jeep driver, but has not filed the statement of the deceased Venkatesh, that was marked during the first round of litigation, which assumes significance.



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13.The learned Special Government Pleader would contend that in the criminal case lodged by the deceased, after the investigation, the police officials have filed the charge sheet and the same was taken on file in C.C.No.118 of 2017. In the criminal proceedings, the injured Venkatesh was examined as P.W.5 and thereafter, the learned Magistrate has acquitted the driver of the appellant jeep. However, during the present second round of litigation, the copy of the judgment in the criminal proceedings was not marked for the reasons best known to the parties.

14.Be that as it may, an acquittal in the criminal case has no bearing in the claim petition filed under the provisions of the Motor Vehicles Act. The standard of proof that is required for the prosecution to prove the charges before the criminal Court, is that of beyond the reasonable doubt. Whereas, the standard of proof that is required in the claim petition filed under the Motor Vehicles Act before the Tribunal, is preponderance of probabilities. Except the evidence of R.W.1, Driver of the jeep, there was no other evidence before the Tribunal to prove the contentions of the Government.



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15. On the contrary, the oral evidence of P.W.3 and P.W.5, alleged occurrence witnesses appear to be more probable and accordingly, the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the jeep. The said finding is well considered and does not require any interference at this appellate stage. Accordingly, the said finding of the Tribunal is hereby confirmed.

16. On the point of quantum of compensation, it appears that both in the first round as well as in the second round of litigations, the Motor Accident Claims Tribunal has committed the same error viz., without there being a finding as to whether Venkatesh (injured) died due to the accidental injuries or not.

17. It is not disputed by the learned counsel for the claimants that the injured Venkatesh gave evidence before the learned Judicial Magistrate, Virudhunagar in C.C.No.118 of 2007 on 08.08.2007 and 03.10.2007 further to the treatment after the accident. The said fact assumes significance. Further more, the fact that the Doctor, Dhanapalan, who was examined during the first round of trial of the claim petition, has not examined during the second round of litigation, also assumes significance.



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18. Admittedly, in the accident, the injured has not suffered any head injury. There is no evidence to show that the deceased died due to the accidental injuries. From Ex.P3, Ex.P4 and Ex.P22, discharge summaries and Ex.P20, letter given by the Appollo Speciality Hospital, Madurai, we find that initially the deceased suffered injuries, underwent surgery and he has also taken further treatment. More than that, there is no evidence on the side of the claimants to show that the deceased died due to the accidental injuries.

19. There is no positive evidence on the side of the claim petitioners to show that the death of the injured Venkatesh is due to the injuries sustained in the accident. In the absence of any positive evidence to show and demonstrate that the deceased died due to the accident injuries, the Additional District Judge, Virudhunagar has committed an error in treating the case as it is a fatal case. It ought to have been tried this case only as injury case.

20. Hence, this Court is of the view that the present case has to be treated as the case of injury on the facts as discussed in the preceding paragraphs and do so. To prove the disability, the claimants have not produced any documents.



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Though we find from the lower court records that the wound certificate was filed before the criminal Court, both the parties have not taken any steps to produce the same before the Motor Accident Claims Tribunal. Hence, we are inclined to fix the notional loss for disability to the tune of Rs.2,00,000/- (Rupees Two Lakhs only) and a sum Rs.50,000/- (Rupees Fifty Thousand only) is awarded towards pain and sufferings.

21.With regard to the medical expenses, Ex.P5 to Ex.P9, were marked. No person was examined to prove the contents Ex.P9. Ex.P5 to Ex.P8 are concerned, P.W.5, who is working as Senior Superintendent in billing department of Apollo Speciality Hospital, Madurai, stated that through three bills, the claimants have paid a sum of Rs.5,74,791/- and the same is rounded off to Rs.5,74,800/-. With regard to the bill under Ex.P9, issued by MIOT hospital, as the same was not proved, the claimants are not entitled for the said bill. Hence, the claimants are entitled for a sum of Rs.5,74,800/- towards medical expenses.

22.Further, taking into consideration of the fact that the deceased had taken treatment as an inpatient from 10.10.2006 to 30.11.2006 and again from 19.12.2006 to 05.01.2007, we are inclined to grant a sum of Rs.60,000/- (Rupees



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Sixty Thousand only) as attendant charges. Since the treatment was taken at Madurai Appollo Hospital, transportation charges is fixed at Rs.50,000/- (Rupees Fifty Thousand only). A sum of Rs.50,000/- (Rupees Fifty Thousand only) is awarded for extra nourishment and a sum of Rs.50,000/- (Rupees Fifty Thousand only) is awarded for loss of amenities.

23.In fine, the claimants are entitled for the following compensation:

S.No.	Head	Amount
1	For disability	Rs.2,00,000/-
2.	Medical Bills	Rs.5,74,800/-
3.	Attendant charges	Rs. 60,000/-
4	Transportation charges	Rs. 50,000/-
5.	Loss of amenities	Rs. 50,000/-
6.	Extra nourishment	Rs. 50,000/-
7.	For pain and sufferings	Rs. 50,000/-
	Total	Rs.10,34,800/-

24.In the result, the Civil Miscellaneous Appeal filed by the Government is partly allowed and the compensation awarded by the Tribunal is reduced to Rs.10,34,800/- (Rupees Ten Lakhs Thirty Four Thousand and Eight Hundred only). Consequently, the cross objection filed by the claimants is dismissed.



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25.The appellants are directed to deposit the compensation amount as modified by this Court i.e., Rs.10,34,800/- (Rupees Ten Lakhs Thirty Four Thousand and Eight Hundred only) with interest at the rate of 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.63 of 2011, on the file of the Motor Accident Claims Tribunal /Additional District Court, Virudhunagar within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount, if any already deposited. If any excess amount is deposited by the appellants, the same shall be refunded to the appellants. On such deposit, the claimants are permitted to withdraw said amount, less the amount if any already withdrawn, as apportioned by the Tribunal by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

[T.K.R.,J.] & [P.B.B.,J.]
22.12.2023

Index : Yes/No
Internet : Yes/No
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To

1.The Motor Accident Claims Tribunal
cum Additional District Judge,
Virudhuangar.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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**RMT. TEEKAA RAMAN,J.
AND
P.B. BALAJI, J.**

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