



C.M.A. (MD)No.234 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.234 of 2023

and

C.M.P.(MD) No.2768 of 2023

The Branch Manager,
The Oriental Insurance Company Limited,
Theni.

...Appellant/ 2nd Respondent

Vs.

1.Ambika
2.Minor Rajesh @ Abi Prakash
3.Minor Yogana
4.Packiyam (died)

...Respondents/ Petitioners

1 to 4

5.Maheswaran
6.P.K.Ramesh
7.Lenin

...Respondents/Respondents

1 to 3

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 21.10.2021 made in M.C.O.P.No.62 of 2016 on the file of the learned Chief Judicial Magistrate Court, Sivagangai.

For Appellant : Mr. A.Ilango



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For R5 : Mr.R.Saravanan

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JUDGMENT

This Civil Miscellaneous Appeal has been filed seeking to set aside the award and decree made in M.C.O.P.No.62 of 2016 on the file of the learned Chief Judicial Magistrate Court, Sivagangai.

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

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(ii)the first petitioner is the wife of the deceased viz., Ilangeshwaran and the second and third petitioners are her children and the fourth petitioner is her father-in-law and father of the deceased.

(iii) the deceased while driving his Motor Cycle on 02.06.2011 at about 08.10 p.m., a tractor bearing Registration No.TN-60-W-5798 belonging to the first respondent driven in a rash and negligent manner dashed against the two wheeler of the deceased and as a result, the deceased succumbed to injuries. The deceased was earning a sum of Rs.450/- per day. The said tractor was insured with the second respondent.



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3.The stand of the Insurance Company before the Tribunal is that at the time of the accident the vehicle was registered in the name of the fourth respondent. It is also averred that there is no negligence on the part of the driver of the tractor.

4.To substantiate the case before the Tribunal on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P13 were marked and on the side of the Insurance Company R.W.1 was examined and Ex.X1 was marked.

5. Considering the factual aspects and the evidence adduced, the Tribunal has fixed the following compensation with interest at the rate of 7.5% per annum:

S. No	Heads	Amount
1.	Dependency compensation	Rs.13,10,400/-
2.	Loss a state	Rs. 15,000/-
3.	Consortium	Rs. 40,000/-
4.	Funeral expenses	Rs. 15,000/-
	Total	Rs.13,80,400/-



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The Tribunal has directed the Insurance Company to pay the entire award amount at the first instance with accrued interest to the claimants and recover the same from the respondents 1, 3 and 4 in the claim petition. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

6.The learned counsel for the appellant contended that since the seventh respondent is the registered owner of the vehicle at the time of accident, there should be a direction to recover the compensation amount from the seventh respondent alone. But the tribunal had ordered recovery from the respondents 5 to 7. Hence, the appellant is before this Court with the present appeal.

7. I have heard the learned counsel appearing on either side and perused the entire materials placed on record.

8.On carefully weighing the contentions raised by both sides and considering the award passed by the Tribunal, this Court is of the view that the Tribunal has already granted the decree to recover the amount from the respondents 5 to 7. It is for the Insurance Company to enforce the decree as



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against the seventh respondent in the manner known to law and it is always open to the Insurance Company to initiate recovery proceedings against the seventh respondent as per the award passed by the Tribunal.

9.For the reasons stated above, I find no merits in this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed.

10.The appellant is directed to deposit the entire compensation amount as awarded by the Tribunal with accrued interest and costs at the first instance to the credit of M.C.O.P.No.62 of 16, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Sivagangai within a period of one month from the date of receipt of copy of this judgment, less the amount, if any already deposited and thereafter, the appellant / Insurance Company is entitled to recover the same from the seventh respondent. On such deposit, the major claimant is 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. The Tribunal shall deposit the shares of the minor claimants in a Fixed Deposit in any one of the Nationalized Banks, till they attain majority. The mother / guardian of the minors is permitted to withdraw the interest



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accrued thereon once in three months directly from the bank. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

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To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court, Sivagangai

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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