



C.M.A(MD)No.400 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A(MD)No.400 of 2018

and

C.M.P(MD)No.5084 of 2018

The Oriental Insurance Company Limited,
through its Branch Manager,
Theni, Office at Sri Vijay Complex II Floor,
Theni-625 531. :Appellant/2nd Respondent

.VS.

1.Kanagavalli

W/o.Late Makash Kannan @ Venkatasamy
through her Maternal Uncle and
next friend Soundararajan,
S/o.Chinnasami Naicker

...1st Respondent/Petitioner

2.K.Sumathi

...2nd Respondent/1st Respondent

3.Srinivasakaperumal Naicker

...3rd Respondent/3rd Respondent

4.Kannammal

...4th respondent/4th respondent

**5.United India Insurance Company Limited,
through its Branch Manager,
Sivakasi, Office at P.B.No.110, Javan Bhavan
Opposite to Head Post Office,
Sivakasi**



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(2nd Respondent remained
ex-parte before the lower Court) ...5th respondent / 5th respondent

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and judgment made in M.C.O.P.No.996/2012 dated 09.03.2018 on the file of the Motor Accidents Claims Tribunal – cum- IV Additional District Judge, Tirunelveli.

For Appellant	:Mr.K.Balasubramanian
For R1	:Mr.Ananth C.Rajesh
For R5	:M/s.Royce Immanuvel
For R2	: Ex-parte
For R3 & R4	: No appearance

JUDGMENT

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

This Civil Miscellaneous Appeal is directed against the judgement and award made in M.C.O.P.No.996 of 2012, dated 09.03.2018, on the file of the Motor Accident Claims Tribunal – cum- IV Additional District Judge, Tirunelveli.

2.The Insurance Company is the appellant herein has filed the present appeal challenging the award passed in M.C.O.P.No.996 of 2012



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on the ground of negligence as well as the quantum of compensation.

The claim petitioner Kanagavalli, who is the wife of the deceased Maheshkannan alias Venkatasami, has filed M.C.O.P.No.996 of 2012 for the death of her husband and has filed M.C.O.P.No.993 of 2012 for the injuries sustained by him in the very same accident.

3. The common evidence has been let in and joint trial was conducted and common judgment was pronounced. As against the award passed in M.C.O.P.No.993 of 2012, the Insurance Company has not filed any appeal.

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 & 5 and perused the materials available on record.

5. The claim petitioner filed the above M.C.O.P.No.996 of 2012 claiming compensation of Rs.2,00,00,000/- for the death of her husband Maheshkannan alias Venkatasami in the road transport accident on 07.12.2011 while they are riding the motorcycle bearing registration No.TN-69-AX-3079. The said Maheshkannan alias Venkatasami was



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riding the two wheeler and the claim petitioner Kanagavalli was pillion rider. It is a specific case of the claim petitioner both in Ex.P1 as well as in the evidence that the Tractor was driven by the driver in a rash and negligent manner and due to burst in tire, the driver of the tractor, without any signal, suddenly stopped the tractor in the middle of the road, as a result, the two-wheeler which was following the tractor dashed behind the tractor, in which, Maheshkannan alias Venkatasami, who is the husband of the claim petitioner, sustained injury and subsequently died.

6. The Insurance Company of the tractor has filed the counter. Insurance Company of the two-wheeler also has filed counter affidavit.

7. During trial, on behalf of the claim petitioner P.Ws.1 to 3 were examined and Ex.P1 to Ex.P22 were marked. On the side of the respondent, the Investigating Officer, who had investigated the matter, was examined as R.W.1 and Ex.R1 to Ex.R5 were marked. Based upon the occurrence witness P.W.3, the trial Court has come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Tractor. Further, it is also the specific evidence of P.W.3



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that the Tractor was connected with the trailer and at the time of the accident, both the tractor and trailer connected together and due to sudden application of brake by the driver, the accident had taken place. Accordingly, the Tribunal held that the owner of the tractor and insurance company of the tractor are jointly and severally liable to pay the compensation and accordingly, calculated the compensation at Rs.18,61,936/-. Challenging the quantum of compensation and liability, the Insurance Company has filed the present appeal.

8. It remains to be stated that as against the award passed in M.C.O.P.No.993 of 2012, wherein, a specific finding has been given by the Tribunal that the accident has taken place due to the rash and negligent driving by driver of the tractor. On a independent reading of the evidence of P.W.3 coupled with the documentary evidence of Ex.P1, Ex.R2, Ex.R3 and Ex.R4, we find that the findings rendered by the Tribunal is well considered one and there is no irregularity or illegality warranting interference in the findings of the tribunal and hence, the appellant Insurance Company is liable to pay the compensation as per Ex.R5 Insurance Policy and the same is in force on the date of accident. On the point of quantum of compensation, we find that as per age of the



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deceased, education qualification the tribunal has rightly applied the multiplier of '16"as per the judgment in **2009(2) TN MAC 1 (SC) (Smt. Sarla Verma and Others Vs. Delhi Transport corporation and another)** and 40% future prospects is also fixed as per the judgment in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**. The Tribunal has rightly fixed the notional income of the deceased at Rs. 10,000/- and deducted 1/3rd since there are three dependents and awarded a sum of Rs.18,61,936/-. We are of the considered view that the compensation awarded by the Tribunal is just and fair compensation and does not require any interference.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accidents Claims Tribunal – cum- IV Additional District Judge, Tirunelveli in M.C.O.P.No.996 of 2012, dated 09.03.2018 is confirmed. The appellant Insurance company is directed to deposit the award amount with proportionate accrued interest and costs, less the award amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant and the respondents 3 &4 are entitled to withdraw their award amount along with proportionate accrued interest and cost as per



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the apportionment made by the tribunal, less the amount already withdrawn, if any, by filing necessary application before the tribunal. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R.,J.] [P.B.B.,J.]
28.11.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
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To
The Motor Accidents Claims Tribunal – cum-
IV Additional District Judge,
Tirunelveli.



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RMT.TEEKAA RAMAN,J.

AND

P.B.BALAJI,J.

am

JUDGMENT MADE IN

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