



C.M.A.(MD).No.1180 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1180 of 2017

The Divisional Manager,
The Oriental Insurance Company Limited,
Divisional Office – II,
North Veli Street,
Madurai.

..... Appellant /2nd Respondent

-vs-

1. Dhanalaksmi
W/o. Late Thangaraj

2. Kavitha
W/o.Veeraiya

3. T.Kumaran
S/o. Late Thangaraj

4. T.Kannan
S/o. Late Thangaraj

.... 1 to 4 Respondents/ 1 to 4 Petitioners

5. S.Arunachalam
S/o. Solaiappan
(5th Respondent remained
ex-parte before the lower Court)

.... 5th Respondent/1st Respondent



C.M.A.(MD).No.1180 of 2017

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in M.C.O.P.No.68 of 2013, dated 14.03.2016, on the file of the Motor Accidents Claims Tribunal cum Special District Judge (for MCOP cases) Madurai.

For Appellant : Mr.A.Ilango

For Respondents : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.68 of 2013, on the file of the learned Special District Judge (for MCOP cases), Madurai.

2. The claimants are the legal heirs of the deceased Thangaraj. According to the claim petition the said Thangaraj was hit by a Tata Sumo while he was walking on Thathaneri main road, on 30.09.2009 at about 4.30 p.m. The injured person was taken in the same vehicle to the hospital. Since the injured person had died on the way, the driver had dropped the deceased



C.M.A.(MD).No.1180 of 2017

near the bridge in Aruldasapuram. Hence, the claimant has further contended that the deceased was working as a Carpenter and claimed a compensation of sum of Rs.10,00,000/- (Rupees Ten Lakhs only)

3. A counter was filed by the owner of the vehicle but remained ex-parte and the Insurance Company had filed a counter contending that the said vehicle was not involved in the accident at all and the driver of the said vehicle is contesting the criminal case which has not attained finality. He had further contended that the compensation claim is exorbitant.

4. The Tribunal, after considering the evidence of P.W.2, the Ex.P.1- FIR and Ex.P.4- Charge Sheet, arrived at a finding that there is no dispute with regard to the involvement of the Tata Sumo in the said accident. Thereafter, the Tribunal has proceeded taking into consideration the monthly income of the deceased at Rs.4,500/- (Rupees Four thousand and Five Hundred only) per month. Therefore, they have proceeded to arrive at a total compensation of Rs.4,59,000/- (Rupees Four Lakhs Fifty Nine Thousand only) and directed the Insurance Company to pay the award amount. This award is under challenge in the present appeal.



C.M.A.(MD).No.1180 of 2017

WEB COPY

5. The learned counsel appearing for the appellant /Insurance Company had contended that the company has taken a specific stand in their counter that the offending vehicle was not involved in the said accident. The claimants have miserably failed to prove the fact that the said vehicle has involved in the said accident, when the involvement of the offending vehicle is in dispute. He further contended that though it is contented in the claim petition that the deceased was taken in the same offending vehicle for treatment, but the body of the injured person is said to have been found near the bridge in Aruldasapuram. Therefore, he doubted the very accident itself. He further contended that though one Ganesan is said to be the witness of the accident, has not been examined. Therefore, the learned counsel appearing for the appellant had contended that the claimants have not proved the involvement of the vehicle and hence, the award passed by the appellant Insurance Company is liable to be set aside.

6. Though the claimants have been served, there is no appearance either in person or through their counsel.



C.M.A.(MD).No.1180 of 2017

WEB COPY

7. The main contention of the learned counsel appearing for the appellant is that the claimants have not established the involvement of the offending vehicle in the said accident.

8. The Insurance Company has appointed one Batcha as their investigator to investigate into the accident. After investigation, he has filed a report to the effect that the offending vehicle was involved in the accident and the owner of the said vehicle has also accepted the involvement of the vehicle in the said accident. The said Investigator has been examined as R.W.1 on the side of the Insurance Company. He has filed an affidavit to the effect that the vehicle was involved in the accident and he has also been cross examined on the side of the claimants. Therefore, it is clear that the Investigator appointed on the side of the Insurance Company himself has admitted about the involvement of the vehicle in the said accident. No other evidence has been let in on the side of the Insurance Company to prove the non-involvement of the offending vehicle in the accident. Therefore, this Court does not find any ground to interfere with regard to the involvement of the vehicle in the said accident.



C.M.A.(MD).No.1180 of 2017

WEB COPY

9. As far as the quantum is concerned, the Tribunal has taken a very conservative view and also considering the occupation of the deceased, fixed a monthly income of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) and had awarded a total sum of Rs.4,59,000/- (Rupees Four Lakhs Fifty Nine Thousand only). Therefore, this Court, does not find any infirmity in the quantum of Award passed by the Tribunal and I do not find any merit in the appeal.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

10.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The Special District Judge (for MCOP cases),
Madurai.

2. The Section Officer,
Vernacular Records,

6/7



C.M.A.(MD).No.1180 of 2017

Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.1180 of 2017

10.03.2023