



C.M.A.(MD).No.1223 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1223 of 2017

and

C.M.P(MD) No.11998 of 2017

The National Insurance Company Limited,
Promanede Road,
Contonment,
Trichy -1

.....Appellant/Respondent No.3

-vs-

1. Manjula

.... Respondent No.1/Petitioner No.1

2. Minor Hemavarshan

(Minor is represented through his mother
and next friend first respondent Manjula herein)

.... Respondent No.2/Petitioner No.2

3. Jeyalakshmi

... Respondent No.3/Petitioner No.3

4. Raju

.... Respondent No.4/ Respondent No.1

5. M/s. National Insurance Company Ltd.,
Divisional Office – I,
3rd Floor, Unity Building,
Annexe, 72, Mission Road,
Bangalore – 560 027.

.... Respondent No.5 /Respondent No.2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1795 of



C.M.A.(MD).No.1223 of 2017

2006, dated 08.12.2009 on the file of the Motor Accidents Claims Tribunal/III Additional Sub Court, Tiruchirapalli.

For Appellant : Mr.D.Sivaraman
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 Accidents Claims Tribunal/III Additional Sub Court, Tiruchirapalli, in M.C.O.P.No.1795 of 2006, primarily on the ground of liability and the quantum.

2. The deceased was riding a two wheeler and a Lorry, coming from the opposite direction dashed against the said two wheeler, due to which, the rider of the two wheeler fell down and died on the spot. The legal heirs of the rider of the two wheeler had filed a claim petition.

3. According to the claimants, the deceased involved in Korai Mate Manufacturing sales and he was also doing local money lending and paddy sales business and he was earning a sum of Rs.30,000/- (Rupees Thirty Thousand only) per month.



C.M.A.(MD).No.1223 of 2017

WEB COPY

4. The owner of the lorry had remained ex-parte and the Insurance Company had filed a counter contending that at the time of accident, the driver of the Mini Lorry was having only LMV license without any endorsement. Therefore, they are not liable to pay any compensation whatsoever. He had further contended that no proof has been filed to establish the income of the deceased person and therefore, the award of the Tribunal of a sum of Rs.12,24,000/- (Rupees Twelve Lakhs and Twenty Four Thousand only) towards loss of income, is on the higher side.

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

6. Though the owner of the vehicle could not be served for want of the correct address, however, considering the facts of the case, this Court has proceeded to pass the orders.



C.M.A.(MD).No.1223 of 2017

WEB COPY

7. The first contention of the learned counsel appearing for the appellant is that the driver of the Mini Lorry was having only LMV License without any endorsement or badge and therefore, there is a violation of policy condition and they are not liable to pay any compensation. However, in view of the judgment of the Hon'ble Supreme Court reported in **2017 14 SCC 663 (Mukund Dewangan Vs. Oriental Insurance Company Ltd.,)** as far as the LMV vehicle is concerned, the badge/endorsement is not required. In the present case, admittedly, the offending vehicle viz., Mini Lorry is an LMV vehicle and therefore, it does not require any badge or endorsement. In view of the above said judgment of the Hon'ble Supreme Court, the said contention of the learned counsel appearing for the appellant is not legally sustainable.

8. The learned counsel appearing for the appellant had further contended that the claimants have not filed any proof whatsoever to establish the fact that the deceased was involved in Korai Mate Manufacturing sales. However, a perusal of the Ex.P.10 to Ex.P.12 would clearly indicate that the deceased was involved in the said Korai Mate Manufacturing sales.



C.M.A.(MD).No.1223 of 2017

WEB COPY

9. The Tribunal has taken into consideration only a sum of Rs.9,000/- (Rupees Nine Thousand only) as the monthly income of the deceased person and had applied the proper multiplier and ultimately, arrived at the loss of income of Rs.12,24,000/- (Rupees Twelve Lakhs and Twenty Four Thousand only). The award under the conventional heads cannot be considered either excess or unreasonable.

10. In view of the above said deliberations, this Court does not find any merit in the appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

05.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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C.M.A.(MD).No.1223 of 2017

To

1. The Motor Accident Claims Tribunal/
III Additional Sub Court,
Tiruchirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.1223 of 2017

R.VIJAYAKUMAR,J.

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C.M.A.(MD)No.1223 of 2017



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C.M.A.(MD).No.1223 of 2017

05.06.2023