



C.M.A(MD)No.616 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.616 of 2017

1.Ramachandran

2.Rajendran

... Appellants/Claimants

Vs.

1.Mariyacathrin

2.Murugan

3.The Branch Manager,
National Insurance Company Limited,
Office-9, George Building,
1st Floor, Railway Station Road,
Trichy.

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 (1) of Motor Vehicle Act, to set aside the judgment and decreetal order made in M.C.O.P.No.122 of 2012 dated 26.03.2014 by the Motor Accident Claims Tribunal/Additional sub Court, Kumbakonam and allow the appeal.

For Appellants : Mr.B.Anandan

For R1 : Mr.T.Senthil Kumar



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For R3 : Mr.J.S.Murali

JUDGEMENT

The present appeal has been filed by the claimants challenging the dismissal of the claim petition by the Motor Accident Claims Tribunal in M.C.O.P.No.122 of 2012.

2. According to the claimants, their father Arumugam had met with an accident on 31.03.2011 at about 2.30 p.m. While he was walking on the road, a Yamaha motor cycle, owned by the 1st respondent and driven by the 2nd respondent in a rash and negligent manner and he was seriously injured and he died on 01.04.2011. The claimants sought for compensation of Rs.5,00,000/-.

3. The owner of the vehicle had filed a counter disputing the ownership of the vehicle and the accident. According to the owner, he has sold it to the 1st respondent on 20.04.2006 and therefore, he is not liable to pay any compensation.

4. The insurance company had filed a counter contending that the involvement of the offending vehicle is doubtful and they have also questioned the quantum of compensation.



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5. The tribunal after considering the oral and documentary evidence had arrived at a finding that the claimants have proved the accident and also the negligence on the part of the rider of the two wheeler, namely the 2nd respondent. The tribunal further found that the age of the deceased would be more than 85 years and the claimants have come out with a false case that their father is 70 years old. The tribunal further found that the claimants are more than 60 years and 70 years old, leading an independent life and they will not be entitled to any compensation and dismissed the claim petition. Challenging the same, the present appeal has been filed by the claimants.

6. According to the learned counsel appearing for the appellants, the tribunal has categorically found that the deceased is their father and he had died due to the rash and negligent driving of the vehicle belonging to the 2nd respondent. After having arrived at such a finding, the tribunal ought not to have dismissed the claim petition. He further contended that even assuming that the claimants were not dependents upon the deceased father, the compensation amount under the conventional heads should have been awarded.



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7. Per contra, the learned counsel appearing for the respondent/insurance company had contended that they have disputed the involvement of the vehicle and the manner of accident. They have also disputed the quantum of compensation that was sought for by the claimants. He further contended that the claimants can never be considered to be dependents upon their father who was 85 years old at the time of death. Hence, he prayed for sustaining the award of the tribunal.

8. I have carefully considered the submissions made on either side.

9. The claimants are admittedly the sons of the deceased. According to the claimants, their age is 60 years and 55 years at the time of accident. They have claimed that their deceased father was 70 years old at the time of the accident. This has created doubt in the minds of the tribunal and the tribunal has proceeded to dismiss the claim petition on the ground that the deceased would be at least 85 years old at the time of accident.

10. The tribunal has further found that one of the claimants is a retired Teacher and the other claimant is a Tailor and both are having



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independent source of income and they were not dependents upon their deceased father. Considering the above said facts, the claim petition has been dismissed.

11. Considering the fact that the deceased was about 85 years old at the time of the accident and the claimants are around 60 years and 55 years at the time of the accident, certainly there cannot be any loss of income from the death of the deceased person. Therefore, the tribunal was right in rejecting the claim petition under the head of loss of income. However, the tribunal was not right in not awarding any amount under the various conventional heads. Therefore, this Court proceeds to pass an award as follows:

12. The claimants would be entitled to loss of filial consortium at the rate of Rs.40,000/- (Rupees Forty Thousand) each and totally a sum of Rs.80,000/- (Rupees Eighty Thousand) and under the head of funeral expenses, Rs.25,000/- (Rupees Twenty Five Thousand) is awarded and under the head of transport expenses, a sum of Rs.10,000/- (Rupees Ten Thousand) is awarded. Totally, a compensation of amount of Rs.1,15,000/- (Rupees One Lakh and Fifteen thousand only) could be awarded to the claimants.



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13. In view of the above said deliberations, the claimants will be jointly entitled to a sum of Rs.1,15,000/- (Rupees One Lakh and Fifteen thousand only) along with 7.5% interest from 26.03.2012 till the date of realization.

14. Considering the fact that the vehicle is not insured with the 3rd respondent insurance company, the 1st respondent in the claim petition, namely Mariyacathrin is liable to pay the above said award amount.

15. In view of the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs.

27.03.2023

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

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- To
- 1.The Motor Accident Claims Tribunal/
Additional sub Court,
Kumbakonam.
 - 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
C.M.A(MD)No.616 of 2017

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