



C.M.A.(MD)No.84 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 03.02.2023

Delivered On : 23.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.84 of 2020

The Manager,
M/s. Future General India Insurance
Company Ltd.,
New Door No.18/1, Old Door No.125/A,
3rd Floor, E-Jon Building,
Ashok Pillar Road,
Madhavan Park, Jeya Nagar,
1st Block, Bangalore District.
Karnataka State.

.. Appellant

Vs.

Sivasami (Died)
1.Chitra
2.Kalyani
3.Ambiga
4.Aravindkumar
5.Surya
6.M/s.Thiridevi Enterprises,
Partner,
(Proprietor KA 51 N 6787 Ford Fiesta Car)
K.G.Lali, Bangalore District,
Karnataka State.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 31.07.2019 made



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in M.C.O.P.No.603 of 2015 on the file of the Motor Accident Claims Tribunal
(Additional District Judge), Pudukkottai.

For Appellant	: Mr.S.Srinivasa Raghavan
For Respondents 1 to 5	: Mr.K.Gokul
For 6 th Respondent	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.603 of 2015 dated 31.07.2019, on the file of the Motor Accident Claims Tribunal (Additional District Judge), Pudukkottai.

2.The appellant herein is the second respondent, the respondents 1 to 5 herein are the petitioners and the sixth respondent herein is the first respondent in the claim petition. The respondents 1 to 5 herein have filed a claim petition in M.C.O.P.No.603 of 2015, claiming compensation for the death of one Arasayi, in an accident that took place on 28.02.2015. The Tribunal has awarded a sum of Rs. 3,54,400/- (Rupees Three Lakhs Fifty Four Thousand and Four Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.603 of 2015 is as follows:

On 28.02.2015, at about 03.00 p.m., when the deceased was working along



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the mud road, the first respondent Ford Car registration No.KA-51-N-6787 came in a rash and negligent manner and dashed against the deceased. She took treatment as 'in patient' from 28.02.2015 till 05.03.2015 and then again she took treatment as 'in patient' from 05.03.2015 till 11.03.2015. Then she was given treatment at home and she died on 30.03.2015. The deceased was rearing cattle and was earning Rs.5,000/- (Rupees Five Thousand only) per month. The petitioners are the dependants of the deceased and they are claimed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation.

4.Brief substance of the counter filed by the first respondent therein is as follows:

The manner of the accident as stated in the petition is wrong. The age of the deceased at the time of the accident was 80 years. The deceased was discharged from the hospital on 11.03.2015. Only due to her age, she died on 30.03.2015. There is no nexus between the cause of the death and the nature of injury. No postmortem was conducted. The first respondent driver drove the vehicle in a careful and cautious manner. It was the deceased who was negligent and she invited the accident. The vehicle was insured with the second respondent.

5.Brief substance of the counter filed by the second respondent therein is



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as follows:

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When the driver of the first respondent vehicle was driving the vehicle in a careful and cautious manner, it was the deceased who crossed the road all of a sudden and the accident has happened only due to the negligence of the deceased. The accident was happened on 28.02.2015. She was discharged from hospital on 11.03.2015. She died only on 30.03.2015. No postmortem was conducted. The deceased had only one fracture in the shoulder and the death is not due to the injuries. The age, income, nature of injuries and nature of treatment are all denied. The petition is to be dismissed.

6.On the side of the petitioners, three witnesses were examined and 7 documents were marked. On the side of the respondents therein, one witness was examined and one document was marked. After trial, the Tribunal awarded a sum of Rs.3,54,400/- (Rupees Three Lakhs Fifty Four Thousand and Four Hundred only) as compensation to be paid by the second respondent therein. Against the award, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:

There is no nexus between the cause of death and the nature of injuries. Section 306 of the Indian Succession Act cannot be put into application. The date of the accident was 28.02.2015 and she was discharged from the hospital on 11.03.2015. She died on 30.03.2015. There is no proof to show that the deceased



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died only due to the injuries sustained in the road accident. The age of the deceased was 80 years and she already had kidney problem and the nature of the injuries would include only fracture of humerus bone which can never be the cause of the death. From the evidence of P.W.2, it is clear that the deceased succumbed not due to the accident injuries but only on some other issues and prayed the claim to be dismissed.

7.On the side of the appellant, it is stated that the deceased died only after a lapse of one month, from the date of the accident. There was no head injury or fracture on the head. The fracture was only on the humerus bone. There was no nexus between to death and the injuries caused in the accident.

8.On the side of the respondents, it is stated that after the date of the accident, the deceased was bed ridden and she died within a period of 20 days and that the death was only due to the accident.

9.A copy of the FIR was marked as Ex.P1, copy of the MV report was marked as Ex.P3. The copy of the policy was marked as Ex.R1. P.W.3 was examined as an eye witness. On the basis of evidence of P.W.3 and on the basis of Ex.P1 and Ex.P3, the Tribunal has fixed the liability on the lorry driver. No eye witness was



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examined on the side of the respondents. The investigation report was not marked. In the view of the above circumstances, it is decided that the lorry driver was rash and negligent and he was responsible for the accident.

10.Considering the evidence of R.W.1 and Ex.P1, it is decided that the policy was effective at the time of the accident. The deceased sustained injuries. The wound certificate was marked as Ex.P2. The case sheet was marked as Ex.P7. The OP sheet was marked as Ex.P6. P.W.2 has deposed that deceased was having fracture on the left hand and that there was hemorrhage on the head and that she was having urinal problems and that another doctor has further deposed that due to the age of the deceased, there was no possibility of having urinal problem.

11.In Ex.P2, it is mentioned that the deceased was having fracture and other injuries. It is seen that the deceased was having various injuries throughout her body. Considering the evidence of P.W.2 and Ex.P2, Ex.P7 and considering the fact that there was only 20 days between the date of discharge and the date of death, it is decided that the death of the deceased might have some nexus with the injuries she sustained in the accident. The quantum of compensation was not questioned in the grounds of appeal. Hence, it is decided that the quantum of compensation fixed by the Tribunal is reasonable.



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12. In view of the above discussion, it is decided that there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.603 of 2015 dated 31.07.2015, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Pudukkottai. In the result, this Civil Miscellenaous Appeal is **dismissed**. The respondents 1 to 5 herein are entitled to a sum of Rs.3,54,400/- (Rupees Three Lakhs Fifty Four Thousand and Four Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit.

13. The appellant herein is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the respondents 1 to 5 herein are permitted to withdraw their respective shares with proportionate interest after deducting any amount received by them earlier. The claimant is not entitled for interest for the default period, if there is any. No Costs.

23.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

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To

- 1.The Motor Accidents Claims Tribunal, Additional District Judge,
Pudukottai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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