



C.M.A.No.1573 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

WEB COPY

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**C.M.A.No.1573 of 2020
and CMP.No.11595 of 2020**

M/s.United India Insurance Co.Ltd.,
No.19/2A, Junction Main Road,
Salem 636 004.

..Appellant/2nd respondent

Vs.

1.Jaganathan
2.Nanchammal
3.Subramaniyan

..Respondents 1 and 2/ Petitioners
...3rd respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act against the judgment and decree dated 11.07.2022 made in M.A.C.T.O.P.No.2395 of 2018 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Ms.S.Arunkumar

For Respondents 1and 2 : Mr.C.Thangaraju

For respondent-3 : Left



C.M.A.No.1573 of 2020

JUDGMENT

WEB COPY

(The order of the Court was made by J.Nisha Banu,J.)

Feeling aggrieved with the Award dated 11.07.2022 passed in M.A.C.T.O.P.No.2395 of 2018 by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, the appellant/Insurance Company has preferred this Civil Miscellaneous Appeal praying to set aside the impugned award.

2. For the sake of convenience, the parties will be denoted as per their array before the Tribunal.

3. It is a case of fatal. The petitioners are the father and mother of the deceased Rajkumar. The case of the petitioners is that on 17.12.2015 at about 1.30 pm while the deceased Rajkumar was driving Eicher Mini lorry bearing Registration No.TN 29 AS 4089, a tanker lorry bearing Registration No.TN 30 AP 0876, which was going ahead the lorry driven by Rajkumar, without making any sign suddenly applied break and stopped the tanker lorry. Due to the said act, an accident occurred. The lorry driven by the deceased Rajkumar hit over the tanker lorry and in the resultant crash, Rajkumar died on the spot.



C.M.A.No.1573 of 2020

At the time of accident, the deceased Rajkumar was aged 25 years and he owned lorry and was earning a sum of Rs.20,000/- per month. The 1st respondent's vehicle was insured with the 2nd respondent Insurance Company. Hence, the petitioners claimed a sum of Rs.40 lakhs as compensation jointly and severally from the respondents 1 and 2.

4. On the side of the petitioners, one Jagannathan and Anandan was examined as P.W.s 1 and 2 and Exs.1 to 10 were marked. On the side of the respondents, neither any witness was examined nor any document was exhibited.

5. The Tribunal relying on FIR-Ex.P.1 registered against the 1st respondent driver and based on the evidence of ocular witness namely P.W.2 Anandan, concluded that the accident occurred due to the rash and negligent driving of the 1st respondent driver.

6. As regards the quantum, the Tribunal has taken a notional income of Rs.15,000/- and awarded a sum of Rs.22,98,000/- with interest at the rate of 7.5% from the date of petition till the date of realization. Assailing the correctness of the award on the aspect of negligence and quantum, the 2nd



C.M.A.No.1573 of 2020

respondent Insurance Company preferred this appeal.

WEB COPY

7. Mr. Arunkumar, learned counsel for the appellant / 2nd respondent submits that the accident occurred due to the rash and negligent driving of the deceased Rajkumar. Considering the fact that the 1st respondent driven tanker lorry was in the way of watering the plants in the highways, the 1st respondent driver could not be said to be negligent and caused the accident. Only due to the rash and negligent driving of the deceased Rajkumar, the accident occurred. The tribunal erred in holding the driver of the water tanker lorry is responsible for the accident.

8. Per contra, Mr.C.Thangaraju, learned counsel for the respondents 1 and 2/petitioners in MCOP submits that the FIR was registered against the driver of the tanker lorry. P.W.2 ocular evidence deposed that the accident occurred due to the rash and negligent driving of the 1st respondent. There is no contra evidence to the case of the petitioners. In such circumstances, there is no infirmity or irregularity on the finding of the Tribunal and he prays to dismiss the Civil Miscellaneous Appeal.

9. Heard both sides and perused the entire evidence available on record.



C.M.A.No.1573 of 2020

WEB COPY 10. Ex.P1-FIR was registered against the 1st respondent driver of the Tanker Lorry. P.W.2 deposed that accident occurred due to rash and negligent driving of the 1st respondent. Hence, the petitioners *prima facie* established that the accident occurred due to the negligent act of the 1st respondent driver. Now the onus steps to the respondents to rebut the evidence of the petitioners. On the side of the respondents, no evidence was let in nor any document was marked to contradict the evidence of the petitioners side. Further, the 2nd respondent-insurance company has not denied the factum of insurance of the 1st respondent vehicle with it. In the circumstances, the petitioners proved the manner of accident as well as that the Tanker Lorry driven by 1st respondent was insured with the 2nd respondent-Insurance Company. Hence, the 2nd respondent/appellant herein is liable to pay compensation to the petitioners.

11. As regards the quantum, the accident occurred in the year 2015 and the deceased was the owner cum driver. He would have earned a sum of Rs.15,000/- per month. The said fixation cannot be found to be excessive. Further, the compensation granted by the Tribunal under other heads appears to be just and reasonable. Therefore, finding no reasons to interfere with the Award passed by the Tribunal, this CMA is dismissed.



C.M.A.No.1573 of 2020

WEB COPY 12. In the result, this CMA is dismissed. Appellant-insurance company is directed to pay the award amount of Rs.22,98,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit to the credit of MCOP.No.1361 of 2016 on the file of MACT, Namakkal [Additional District Court (FAC) Namakkal], less the amount if any already deposited, within a period of two months from the date of receipt of a copy of this judgment. On such deposit being made, the petitioners/claimants [respondents 1 and 2 herein] are entitled to withdraw the same by filing proper application. No costs. Consequently connected miscellaneous petition is closed.

nvsri

(J.N.B,J.) (R.S.V., J.)
05.12.2024

To

The Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.



WEB COPY



C.M.A.No.1573 of 2020

J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

nvsri

C.M.A.No.1573 of 2020

05.12.2024



C.M.A.No.1573 of 2020

C.M.A.No.1573 of 2020

WEB COPY
J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

(Order of the Court was made by **J.NISHA BANU, J.**)
This writ petition is listed today under the caption 'for being mentioned'.

2.The learned counsel for the petitioner submits that in the order dated 05.12.2024, the prayer portion and the first para of the order have been wrongly mentined and the same may be corrected.

3.In view of the above, the prayer portion and the first para of the order shall be read as follows:

“Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 14.10.2019 made in MCOP No.1361 of 2016 on the file of the Motor Accident Claims, Tribunal, Additional District Court (FAC), Namakkal.”

“Feeling aggrieved with the award dated 14.10.2019, passed in MCOP No.1361 of 2016 by the Motor Accident Claims Tribunal, Additional District Court (FAC), Namakkal, the appellants/Insurance Company has preferred this Civil Miscellaneous Appeal praying to set aside the impugned award.”



C.M.A.No.1573 of 2020

WEB COPY

4.The Registry is directed to carry out necessary amendment and issue fresh order copy to the parties concerned.

(J.N.B.,J.) (R.S.V.,J.)
08.04.2025

ta



WEB COPY



C.M.A.No.1573 of 2020

J. NISHA BANU, J.
and
R.SAKTHIVEL, J.

ta

C.M.A.No.1573 of 2020

08.04.2025