



C.M.A.No.3113 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 30.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.3113 of 2023

and

C.M.P.No.29432 of 2023

M/s. New India Assurance Company Limited,
Motor Third Party Claims Hub,
No.252/42, First Floor N.M.Arcade,
Opposite to ARRS Multiplex,
Meyyanur Bye-pass Road,
Salem.

.. Appellant

Vs.

1.Chinnapaiyan

2.Suresh

3.Nithya

4.K.Ramesh

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the final award dated 01.06.2023 passed in M.C.O.P.No.913 of 2022 by the Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellant : Mr.J.Michael Visuvasam
For Respondents : No appearance



C.M.A.No.3113 of 2023

J U D G M E N T

WEB COPY The appellant - Insurance Company has filed the present appeal against the award passed by the Special District Judge, Motor Accident Claims Tribunal, Salem, in M.C.O.P.No.913 of 2022 dated 01.06.2023.

2.The claimants who are the brother, brother's son and sister of the deceased Murugesan filed the claim petition on the ground that the deceased Murugesan on 18.04.2022 was walking on the extreme left of Chennai - Salem Main Road and at about 09.00 P.M., when he was near a School, the offending vehicle which was a car was driven in a rash and negligent manner and it dashed on the deceased as a result of which the deceased sustained grievous injuries and he succumbed to the injuries. An FIR came to be registered against the driver of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle.



C.M.A.No.3113 of 2023

4.The Tribunal having rendered the above finding, fixed the total compensation at Rs.6,25,000/- under various heads as follows:

Loss of income [(10,000 X 12 X 9=) 10,80,000 – 1/2(5,40,000) =	-	Rs.	5,40,000-00
Loss of love and affection (20,000 X 3)	-	Rs.	60,000-00
Funeral expenses	-	Rs.	25,000-00
Total	-	Rs.	6,25,000-00

5.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

6.The Insurance Company has filed this appeal questioning both on the ground of negligence as well as the compensation that was fixed by the Tribunal.

7.Heard the learned counsel for the appellant. The respondents have been served with notice and their names have also been printed in the cause list. There is no appearance either in person or through counsel.

8.This Court has carefully considered the submissions made on the side of the appellant and the materials available on record.



9.This Court has also carefully gone through the award passed by the Tribunal.

10.In the instant case, it is quite clear that the deceased Murugesan was attempting to cross the road and as a result he was dashed by the offending vehicle. P.W.1, who is the brother of the deceased was examined on the side of the claimants. He was not an eyewitness to the incident. The Tribunal has fixed the negligence only based on Ex.P1, which was the FIR registered against the driver of the offending vehicle. Unfortunately, the driver of the offending vehicle was not examined on the side of the Insurance Company. Therefore, the Tribunal had to necessarily go by the evidence of P.W.1, supported by the FIR which was marked as Ex.P1. Applying the principles of preponderance of probabilities, this Court does not find any reason to interfere with the finding of the Tribunal regarding the issue of negligence.

11.The next issue pertains to the compensation that was fixed by the Tribunal. In the first place, there was not a single document filed before the Tribunal in order to establish the relationship of the claimants with the deceased Murugesan. Even in the claim petition, the claimants



have described themselves as brother, brother's children of the deceased.

No document was marked before the Tribunal to establish the relationship. The Tribunal had accepted the relationship claimed by the claimants only based on the counter filed by the Insurance Company. The claimants are duty bound to establish their relationship by filing the relevant documents and the same has not been done in the instant case.

12.The next issue is as to whether the claimants were really dependents on the deceased Murugesan. The Tribunal having rendered a finding that the dependency alone has to be taken into consideration for determining the quantum of compensation, assumed that the respondents / claimants were the dependents only based on the relationship claimed by them. There is no dispute that the deceased died as a bachelor.

13.Even assuming that the claimants are the brother, brother's son and sister, there is absolutely nothing to show that they are depending on the income of the deceased. The compensation cannot be fixed on mere assumption and compensation cannot be granted for a mere asking unless the claimants are able to establish that they are dependents of the deceased.



C.M.A.No.3113 of 2023

14.The Tribunal has mechanically fixed the compensation under various heads without really going into this crucial factor. In the absence of establishing the relationship with the deceased and in the absence of proving the dependency, there is no ground to award any compensation in this case to the claimants.

15.In the light of the above discussion, the award passed by the Tribunal by granting compensation of Rs.6,25,000/- in favour of the claimants is hereby set aside and this Civil Miscellaneous Appeal stands allowed. The appellant – Insurance Company was directed to deposit the entire award amount along with interest at the time of entertaining this appeal. Since the appeal is allowed, the appellant shall be permitted to withdraw the amount deposited along with accrued interest. Consequently, the connected Miscellaneous Petition is closed. No costs.

30.07.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



C.M.A.No.3113 of 2023

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To

- 1.The Special District Judge,
Motor Accident Claims Tribunal,
Salem.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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C.M.A.No.3113 of 2023

N.ANAND VENKATESH, J.

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C.M.A.No.3113 of 2023

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