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C.M.A.No.1489 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1489 of 2019

and

C.M.P.No.4181 of 2019

United India Insurance Co. Ltd.,
No.235, New Military Road,
Avadi, Chennai – 600 054.

Now at :
Motor Third Party Claims Hub,
Silingi Building, 4th Floor,
No.134, Greams Road, Chennai – 600 006.

... Appellant

Vs.

1.Shanthi
2.Raja
3.Subramani
4.Nagammal
5.A.Arokiyadoss
(*exparte in trial Court, hence given up*)
6.Gangammal

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 16.03.2012 in M.A.C.T.O.P.No.722 of 2009 on the file of the Motor Accident Claims Tribunal, Poonamallee.

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For Appellant : Mr.P.Sankaranarayanan
For R1 to R4 : Mr.J.Mahalingam
For R5 and R6 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 16.03.2012 in M.A.C.T.O.P.No.722 of 2009 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.II) at Poonamallee (hereinafter referred to as "the Tribunal").

2.The facts of the case are as follows :

On 19.10.2000 at about 02.00 p.m., while the deceased was guiding a lorry bearing Registration No.TN-28-Y-2925, belonging to the 5th respondent and insured with the appellant Insurance Company, in reversing the lorry for unloading the iron materials in a Shop at M.K.N. Road, Alandur, by patting the body of the lorry from one side, the driver of the lorry reversed the lorry in a rash and negligent manner, due to which, the



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body of the lorry came into contact with an electrical wire, and led to electrocution of the deceased. The deceased was immediately taken to the Royapettah Government Hospital, where he was reported brought dead. Thereafter, the respondents 1 to 4, who are the wife and children of the deceased, filed a claim petition before the Tribunal in M.A.C.T.O.P.No.722 of 2009, claiming compensation of a sum of Rs.25,00,000/- under various heads.

3.The Tribunal, after considering the oral and documentary evidence on record, fixed the liability on the driver of the lorry, and awarded a total compensation of Rs.8,75,000/- and directed the appellant, who is the insurer of the lorry, to deposit the compensation with interest at the rate of 7.5% p.a. from the date of filing the claim petition.

4.Challenging the liability and the quantum of compensation, the Insurer of the lorry has preferred the above Appeal before this Court.



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5.Learned counsel appearing for the appellant Insurance Company would submit that the deceased himself was solely responsible for his death. The learned counsel further submitted that the accident happened in the year 2000, however, the claim petition was filed only in 2009, i.e., after a delay of 9 years. Though an FIR was registered in the year 2000, there is no reason as to why the claim petition was filed after a delay of 9 years. However, ignoring the same, the Tribunal has awarded a compensation of Rs.8,75,000/-, which is exorbitant. Further, the learned counsel would submit that the claimants have not produced any records to prove the monthly income of the deceased. He further submitted that the monthly income of an individual in the year 2000 would be only Rs.4,000/-, however, the Tribunal has fixed the notional income of the deceased as Rs.6,000/- which is highly excessive. He also submitted that the amounts awarded by the Tribunal under other heads are also on the higher side and prayed for setting aside the award of the Tribunal.



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6.*Per contra*, learned counsel appearing for the respondents/claimants would submit that the Tribunal has rightly appreciated the evidence of eye-witness (P.W.2) and other oral and documentary evidence on record and fixed the liability on the driver of the lorry. He further submitted that the FIR has been registered immediately after the accident as against the driver of the lorry, however, due to ignorance and lack of knowledge, the claimants had filed the claim petition belatedly. He further submitted that the Tribunal has rightly taken the notional income as Rs.6,000/- and awarded compensation under various heads which needs no interference. Therefore, the learned counsel prayed for dismissal of the Appeal.

7.This Court heard the learned counsel on either side and perused the entire materials available on record.

8.Immediately after the accident, an FIR has been registered in Crime No.753 of 2000 as against the driver of the lorry, stating that, when the deceased was guiding in reversing the lorry by patting the body of the lorry,



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the driver of the lorry reversed the lorry in a rash and negligent manner, thereby, the upper part of the lorry came into contact with a live wire, due to which, the deceased was electrocuted and died on the spot. The claimants have examined an eye-witness, namely Kannappan, as P.W.2. P.W.2 has deposed in tune with the contents of the FIR. However, the appellant has not examined any eye-witness on their side to contradict the evidence of P.W.2. Therefore, the Tribunal has rightly fixed the liability on the driver of the lorry.

9.As regards quantum, P.W.1 has deposed that the deceased was employed as Coolie in the Iron Materials Shop and was earning Rs.300/- per day. However, the appellant has not cross-examined P.W.1 on this aspect nor has produced any evidence to contradict the evidence of P.W.1 insofar as the monthly income of the deceased is concerned. Therefore, the Tribunal, after deducting the holidays, has fixed the notional income of the deceased as Rs.6,000/- per month and after deducting the 1/4th amount, has fixed the monthly income as Rs.4,500/-, which, in the view of this Court, is fair and reasonable. The Tribunal has further awarded a sum of Rs.10,000/-



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towards funeral expenses; Rs.5,000/- towards transportation charges; Rs.20,000/- towards loss of consortium; Rs.30,000/- towards loss of love and affection, which are all fair and reasonable, and need no interference.

10.As regards delay, since the claim petition was filed with a delay of 9 years, the Tribunal has rightly rejected the interest portion from the year 2000 till the date of filing of the claim petition in 2009 and has awarded interest only after the filing of claim petition in 2009 onwards. Hence, the same needs no interference.

11.In view the above, this Civil Miscellaneous Appeal is dismissed and the judgment and decree of the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Neutral Citation : Yes / No

To

The Motor Accident Claims Tribunal,
Poonamallee.



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M. DHANDAPANI, J.

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