



C.M.A(MD)No.1073 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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and

M.P(MD)No.1 of 2012

National Insurance Company Limited,
Represented by its Branch Manager,
Vigneshwara Building,
Door No.2/7, Pudukottai Road,
Near Over Bridge,
Trichy-20.

... Appellant/2nd Respondent

Vs.

1.Chandran

2.Indhiradevi

3.Mahamani

4.Gnanabalam

... Respondents/Petitioners

5.Vel Pandian

... Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree, dated 30.03.2012 made in M.C.O.P.No.13 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai.



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For Appellant : M/s.P.Malini
For R-1 to R-4 : Mr.S.Anand Chandrasekar
for M/s.Sarvabhuman Associates
R-5 : Dismissed

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.13 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai, dated 30.03.2012, wherein, the respondents 1 to 4 herein have filed a petition for the death of one Balsamy, who died in the road accident.

2. The Tribunal has awarded a sum of Rs.2,13,000/- towards compensation along with interest at the rate of 7.5% per annum. As against the order passed by the Tribunal, the second respondent / Insurance Company has preferred this appeal by disputing the liability.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.



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4. The brief facts of the petition averments are as follows:

On 09.01.2008 at about 10.00 am, when the deceased Balsamy was proceeding by walk in Thirupachetty to Maranaadu road near Vellikurichi, at the time, the two-wheeler bearing Registration No.TN 63 F 2171 came in a rash and negligent manner and dashed against the Balsamy. Thereby, he sustained injuries all over his body. Immediately, he was admitted in the Rajaji Hospital and he was inpatient from 09.01.2008 to 13.01.2008 and thereafter, he was taking continuous treatment and due to head injury, he died on 01.07.2008. Therefore, the petitioners are claiming compensation.

5. The brief facts of the counter averments filed by the first respondent are as follows:

The averments made in the petition are all denied by the first respondent. The petition is not maintainable either in law or on facts. The first respondent denied the age, income and occupation of the deceased. The petitioners are put to stick proof of the cause of death. The first respondent vehicle was insured with the second respondent and thereby, the second respondent alone is liable to pay compensation to the petitioners.



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6. The averments made in the counter filed by the second respondent are as follows:

The accident was not took place due to the negligence on the part of the driver of the first respondent and the deceased without knowing the on coming vehicle, suddenly crossed the road and thereby, he himself invited the accident. The petitioners are put to stick proof of the cause of death. The second respondent denies the age, income and occupation of the deceased. Hence, the petition is liable to be dismissed.

7. Before the Tribunal, on the side of the petitioners, they examined P.W.1 and marked Exhibits P.1 to P.5. On the side of the respondents, they examined R.W.1 and marked Exhibits R.1 to R.3.

8. After analyzing the evidences adduced on either side, the Tribunal has awarded a sum of Rs.2,13,000/-. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeal has been preferred on various grounds including the liability.



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9. The learned Counsel appearing for the appellant / second respondent would contend that the date of accident is 09.01.2008 and the deceased died on 01.07.2008 and the petitioners have not proved the cause of death and the deceased has not died due to the accident and the petitioners have not even produced any medical evidences to prove their case and the Tribunal without considering the same, awarded a sum of Rs.2,13,000/- by directing the second respondent to pay the said amount. Therefore, the order passed by the Tribunal is liable to be set aside.

10. The learned Counsel appearing for the respondents would contend that the Tribunal has only awarded a sum of Rs.2,13,000/- for the loss of love and affection and not awarded on other heads, by holding that the death was not caused due to the accident. The Tribunal after considering the evidences adduced by the petitioners and the respondents, fairly awarded the compensation and thereby, the present Civil Miscellaneous Appeal is liable to be dismissed.

11. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination



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in this appeal is:

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i) Whether the appeal is liable to be allowed or not?

12. In this case, the date of accident is 09.01.2008 and the deceased died only on 01.07.2008 (i.e.,) after six months from the date of the accident. The petitioners have not produced documents and they failed to examine the Doctor, who gave treatment and they only produced the Accident Registration of the Madurai Rajaji Hospital. The Tribunal also has not discussed anything about the examination of witnesses and cause of death. However, based on the evidence of the petitioner, came to a conclusion that the deceased died due to the accident. Since the accident is admitted even the deceased was alive, if the claim is filed by him, he is entitled for compensation. But he has not filed any application and during his lifetime, he has not filed any application for compensation. Considering the injuries sustained by the petitioner, this Court is of the view that he would have incurred some amount for medical expenses and he is entitled for an amount for pain and sufferings and other heads and Attendance Charges. The claimants / respondents 1 to 4 also not disputed the quantum of the amount and they have not filed any cross objection or



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separate appeal by disputing the quantum of the amount. In this appeal, the Insurance Company only filed the appeal by disputing the liability. Even if the deceased was alive, he is entitle to compensation for the injury sustained by him under various heads. Therefore, the award passed by the Tribunal can be adjusted for the injury sustained by the deceased. Considering the date of accident and considering the quantum of amount awarded by the Tribunal, this Court is declined to interfere with the order passed by the Tribunal.

13. In the result, this Civil Miscellaneous Appeal stands dismissed by confirming the order passed by the Tribunal in M.C.O.P.No.13 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai, dated 30.03.2012. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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



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To

- 1.The Motor Accident Claims Tribunal / Chief
Judicial Magistrate,
Sivagangai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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