



C.M.A..(MD)No.1611 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED **08.03.2024**

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THE HONOURABLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

C.M.A.(MD)No.1611 of 2008

1.Maria Stella

2.Arputha Suresh (Minor)

3.Selastin Surela (Minor)

...Appellants

(Minors are represented by their mother, 1st petitioner)

/Vs./

1.Sahaya Raj

2.National Insurance Company Limited,
4132, East Main Street,
Pudukottai.

...Respondents

Prayer: Appeal - filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment in MCOP No.1895 of 2001 dated 18.04.2005 on the file of the Motor Accident Claims Tribunal, (Additional District Judge – Fast Track Court No.II), Trichy.

For Appellants : Mr.K.P.Narayana Kumar

For Respondents : No appearance (R1)

Mr.N.Murugan (R2)



C.M.A..(MD)No.1611 of 2008

JUDGMENT

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This appeal has been filed against the decree and judgment in MCOP No. 1895 of 2001 dated 18.04.2005 on the file of the Motor Accident Claims Tribunal, (Additional District Judge – Fast Track Court No.II), Trichy.

2. The brief facts of the case are as follows:-

(i) On 01.02.2001, when the deceased / husband of the first appellant was travelling as a pillion rider by a TVS-50 vehicle bearing Registration No. TN-N-55-D-8781 in Kavalkaaranpatti Road, the rider of the TVS-50, namely, Arockiyam, drove the vehicle in a rash and negligent manner and dashed against the paddy crops crushing machine and caused the accident, due to which, the deceased sustained injuries and succumbed to death on the very next day. Hence, the claimants, who are the wife and children of the deceased filed a claim petition in MCOP No.1895 of 2001 seeking compensation amount.

(ii) A counter has been filed by the Insurance Company denying all the averments stating that the respondent is the insurer of the TVS-50 vehicle bearing Registration No. TN-N-55-D-8781. The police has disclosed the fact that the deceased person had himself driven his own motor cycle, TVS-50 Champ bearing Reg.No. TAY 9653 carrying one Sebastian as pillion rider. The



C.M.A..(MD)No.1611 of 2008

claimants have deliberately hidden the real facts. The vehicle bearing Reg.No. TAY 9653 which was really involved in the accident has no valid documents such as insurance policy. Hence, the claimants lodged the complaint giving false details.

3. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P1 to P13 were marked and on the side of the Respondents, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R3 were marked.

4. The Tribunal, after considering oral and documentary evidence available on record, found that there is no evidence to prove that TVS-50 vehicle bearing Registration No. TN-N-55-D-8781 involved in the accident and hence, dismissed the claim petition. Challenging the same, the claimants filed this appeal stating that the trial Court has not considered the evidence deposed by the claimants' side witnesses.

5. The learned counsel appearing for the claimants submits that the claimants lost their sole breadwinner of the family and the TVS-50 vehicle bearing Registration No.TN-N-55-D-8781 involved in the said accident and hence, they seek for compensation.



C.M.A..(MD)No.1611 of 2008

WEB COPY

6. The learned counsel appearing for the Insurance Company submits that the Tribunal has rightly dismissed the claim petition after analyzing the materials placed on record and hence, no interference with the dismissal of the claim petition is required.

7. I have heard the learned counsel appearing on either side and also perused the materials available on record.

8. On perusal of the documents available on record, it is seen that the Sub Inspector of Police has deposed that the TVS-50 vehicle bearing Registration No. TN-N-55-D-8781 did not involve in the accident and only the vehicle bearing Reg.No. TAY 9653 involved in the accident. The final report has also stated that the deceased Rathinam itself is the accused and he was the person, who had involved in the accident and hence, the same was closed.

9. On the cross-examination of the evidence of the Sub Inspector of Police, it is found that the complaint was given only on 03.02.2001 and the mahazer was prepared without any material evidence. In the absence of any



C.M.A..(MD)No.1611 of 2008

other evidence, he has taken his own decision and not examined any witness regarding non-involvement of the TVS-50 vehicle bearing Registration No. TN-N-55-D-8781. Instead, another vehicle was given to him for producing it before the concerned authority. Further, the claimants are not in a position to do any investigation. It is the duty of the Investigation Officer, Regional Transport Officer and Motor Vehicle Inspector to cull out the truth. That being the case, the accident had happened, in which one person died, which has been accepted too. There is no proper evidence given by the Sub Inspector of Police that TVS-50 vehicle bearing Registration No. TN-N-55-D-8781 did not involve in the accident. Therefore, the claimants are entitled for compensation as the TVS-50 vehicle bearing Registration No. TN-N-55-D-8781 involved in the accident.

10. This Court is of the view that the deceased was working as Attender in the Cooperative Society, Keelaiyur and therefore, his monthly income is fixed at Rs.3,000/- and he was aged at 42 years at the time of accident. The future prospects at 40% as per the dictum laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd., vs. Pranay Sethi and others* [CDJ 2017 SCC 1220] is fixed.



C.M.A..(MD)No.1611 of 2008

WEB COPY

11. Accordingly, the notional income of the deceased is fixed at Rs.3,000/- (Rupees Three Thousand only) and 40% of the income (i.e., Rs.1,200/-) is added towards future prospects. The deceased was the family man and hence, 1/4 of the income has to be deducted towards personal expenses. [Rs.4,200 x $\frac{1}{4}$ = Rs.1,050] and monthly income would come to Rs.3,150/-. The loss of income would be [Rs.3,150 * 12 * 13 (multiplier) = Rs.4,91,400/-] Rs.4,91,400/-. This Court also awards a sum of Rs.40,000/- towards loss of consortium, Rs.40,000/- towards love and affection and Rs. 15,000/- towards funeral expenses.

12. Hence, the claimants are entitled to the compensation as stated below:

S.No.	Description	Amount
1.	Loss of Income /Dependency	Rs. 4,91,400/-
5.	Funeral Expenses	Rs. 15,000/-
6.	Love and affection for the 2 nd & 3 rd claimants	Rs. 40,000/-
7.	Loss of consortium	Rs. 40,000/-
	Total	Rs. 5,86,400/-



C.M.A..(MD)No.1611 of 2008

13. In fine, this Civil Miscellaneous Appeal is allowed and the compensation of Rs.5,86,400/- is awarded. Out of the award amount, the first claimant is entitled to 40% of the award amount, ie., Rs.2,34,560/- and the second and third claimants are entitled to 30% of the award amount each ie., Rs.1,75,920/- each.

14. The second respondent is directed to deposit the entire compensation amount along with interest at the rate of 4% per annum from the date of filing of this civil miscellaneous appeal to the credit of C.M.A.(MD)No.1611 of 2008, on the file of this Court, within a period of two months from the date of receipt of copy of this judgment. On such deposit, the major claimant, wife of the deceased is permitted to withdraw the award amount as apportioned by this Court, by making necessary application before this Court. The minor claimants would have now attained majority and therefore, they are also permitted to withdraw the award amount as apportioned by this Court, by making necessary application before this Court, if they attain majority. No costs.

08.03.2024

NCC : Yes/No
Index : Yes/No
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C.M.A..(MD)No.1611 of 2008

V.BHAVANI SUBBAROYAN, J.

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TO:-

- 1.The Motor Accident Claims Tribunal,
(Additional District Judge – Fast Track Court No.II),
Trichy.
- 2.The Section Officer,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
C.M.A.(MD)No.1611 of 2008

Dated:
08.03.2024