



C.M.A.(MD)No.768 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 16.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD).No.768 of 2006
and C.M.P(MD)No.1 of 2006

Kamaraj

... Appellant/Respondent

Vs.

1.Mayakrishnan (Died)
2.K.Seethalakshmi(Died)
3.Parameswari Selvam
4.Ponninselvi
5.Karthikeyan

...Respondents

(R3 to R5 are brought on record as Lrs of the deceased sole respondent, vide court order dated 24.09.2019 made in CMP.12060/16 in CMA(MD)No.768 of 2006)

(A memo dated 10.09.2024 in USR No.33058 is recorded to the effect that the name of the respondent 3 and 4 amended as per the order of this Court dated 12.09.2024 made in CMA.(MD)No.768 of 2006 by SMJ)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act against the judgment and decree dated 18.11.2005 made in MCOP.No.31 of 2003 on the file of the Additional Motor Acciden Claims Tribunal (Additional Sub-Court), Tenkasi.

For Appellant : Mr.D.Nallathambi



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For R3 to R5 : Mr.R.J.Karthick
JUDGMENT

The above appeal has been filed by the owner of the vehicle challenging the finding on liability and the quantum of compensation awarded to the injured claimant (since deceased).

2. A claim petition was filed by one Mayakrishnan stating that while he was walking on a public road, a two-wheeler belonging to the appellant ridden in a rash and negligent manner dashed him from behind as a result of which, he had suffered grievous injuries all over the body.

3. The appellant filed a counter stating that the accident took place only due to the negligence of the claimant; that he had sold the vehicle to one Padmanathan, which is evidenced by an agreement dated 06.05.2001; and that in any case, the compensation claimed was excessive.

4. Before the Tribunal, the claimant examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.11. The appellant marked 3 documents but did not examine any witnesses.



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5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place in the manner alleged in the claim petition; and that since the record indicates that the appellant is the owner of the two-wheeler, he is liable to pay compensation. Admittedly, the vehicle was not insured.

6. During the pendency of this appeal, the claimant namely, Mayakrishnan died and thereafter, his legal heirs were impleaded in this appeal. Among them, one Seethalakshmi also died.

7. The learned counsel for the appellant submitted that the agreement dated 06.05.2001 would show that the vehicle was transferred in the name of Padmanathan and hence, the appellant cannot be held liable; that in any case, the compensation awarded by the Tribunal is excessive; and prayed for setting aside the award.

8. The learned counsel for the respondents 3 to 5 per contra submitted that since the appellant was the registered owner as could be seen from the Registration Certificate, the Tribunal was right in holding that the appellant is liable to pay compensation; that the quantum of



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compensation awarded is reasonable; and prayed for dismissal of the appeal.

9. This Court gave its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

10. The points for consideration in the above appeal are as follows:

- i) Whether the finding on liability by the Tribunal is justified; and
- ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable.

11. As regards the first point, the only defence taken by the appellant is that he had sold the two-wheeler to one Padmanathan. According to the appellant, the sale took place pursuant to an agreement dated 06.05.2011, which is marked as Ex.R.1. In the registration certificate, the appellant is shown as the owner of the vehicle. It is well settled that the owner, whose name is in the Registration Certificate, would be liable to pay compensation. In the instant case, the appellant's



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name is in the Registration Certificate and hence, he is liable to pay compensation. If the appellant is able to show that the vehicle was delivered to a third party, it is open to the appellant to independently pursue any action that may be provided in law against the said third party. Therefore, this Court is of the view that the finding of the Tribunal that the appellant, who is the owner of the vehicle, is liable to pay compensation cannot be faulted. The point No.1 is answered accordingly.

12. As regards the quantum of compensation, before the Tribunal the claimant has established that he is a tailor and suffered two fractures. As a result of the fractures, he was unable to work properly. P.W.2 had deposed that because of the fractures suffered by the claimant, he could not walk without a walking stick. The Doctor had also assessed the disability at 40%.

13. The Tribunal had fixed the notional income at Rs.1,000/- and had adopted a multiplier '20', which is erroneous. The Tribunal had also not assessed the disability based on the evidence on record. Considering the evidence on record, this Court is of the view that the claimant had not established that he had 100% functional disability due to the injuries



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suffered in the accident. This Court is of the view that the functional disability can be assessed at 40% based on the evidence of the Doctor and the nature of avocation of the claimant. This Court is of the view that the notional income fixed by the Tribunal at Rs.1,000/- for the accident took place in the year 2001 is meagre. This Court is of the view that a sum of Rs.1500/- can be fixed as notional income and 40% has to be added towards future prospects. Thus, the compensation under the head loss of income has to be $(1500 + 600 \times 12 \times 13 \times 40/100)$ Rs. 1,31,040/-. The award of compensation under the other heads is just and reasonable and hence confirmed. The details are as follows:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Loss of income	2,40,000.00	1,31,040.00	Reduced
2.	Transportation	5,000.00	5,000.00	Confirmed
3.	Damages to clothes	1,000.00	1,000.00	Confirmed
4.	Extra Nourishment	25,000.00	25,000.00	Confirmed
5.	Medical Expenses	90,000.00	90,000.00	Confirmed
6.	Pain and suffering	25,000.00	25,000.00	Confirmed
7.	Disability	10,000.00	10,000.00	Confirmed
8.	Loss of earning capacity	9,000.00	9,000.00	confirmed
Total :		4,05,000.00	2,96,040.00	Reduced



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14. The interest awarded by the Tribunal at the rate of 9% is excessive. The appellant is directed to deposit the modified compensation with interest at the rate of 7.5% less the amount already deposited within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the compensation amount by filing a suitable application.

15. In fine, this appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

16.10.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To,
1. The Additional Motor Acciden Claims Tribunal (Additional Sub-Court), Tenkasi.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD).No.768 of 2006
and C.M.P(MD)No.1 of 2006

16.10.2024