



C.M.A(MD)No.157 of 2012

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.157 of 2012

The Oriental Insurance Company Limited,
Divisional Office No. IV,
No. 12, Jain Bhawan Shahid Bhagat Singh Marg,
New Delhi.

... Appellant

Vs.

1. R. Selvasekaran (Died)
2. M/s. Friends Transport Company,
Old Railway Road,
Handa Complex,
Near Sant Cinema, Jalandar,
Punjab.
3. Sh. Shiv Kumar Gupta
4. Kanaga
5. Baraneetharan
6. Ramkumar

... Respondents

[The 2nd and 3rd respondents are remained exparte before the Tribunal]

*[The 4 to 6 respondents are brought on record as Legal representatives
of the deceased 1st respondent vide Order of this Court, dated
04.04.2024]*



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award made in M.C.O.P.No.112 of 2005, dated 16.09.2010 on the file of the Motor Accident Claims Tribunal cum Additional District Judge (FTC No.1), Thoothukudi.

For Appellant : Mr.E.Chandrasekaran

For R-1 : Died

For R-2 to 6 : No Appearance

JUDGEMENT

The Insurance Company has preferred this appeal against the award made in M.C.O.P.No.112 of 2005, dated 16.09.2010 on the file of the Motor Accident Claims Tribunal cum Additional District Judge (FTC No.1), Thoothukudi.

2. It is a case of injury. The contention of the insurance company is that eventhough, the person has suffered injury and it was considered as a fatal case. Subsequently, the injured died. Therefore, the Tribunal has awarded under the head of pain and suffering and mental agony are erroneous. It is seen that the accident was occurred on 21.04.2004 and the injured/Selvasekaran died on 17.02.2012. Therefore, the contention of the insurance company that since the



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Selvasekaran died, then pain and suffering and the mental agony cannot be awarded. The said contention cannot be accepted. The expenditure what are the prevailing conditions will be taken for fixing compensation. Since the case was treated as injury then apart from the injury the subsequent death of Selvasekaran will not alter the conditions. Therefore, the said contention cannot be accepted. It is considered as injury case and the compensation for injury is applicable to this case. Therefore, this Court is not inclined to interfere with the order passed by the Tribunal. Since the death was reported belatedly the Insurance Company has unnecessarily incurred interest.

3. It is seen that the insurance company has already deposited 50% of the compensation amount, the insurance company is liable to waive interest for 25%. Therefore, the Insurance Company is directed to deposit the balance amount of 50%, less the amount if already deposited, however interest portion 25% is waived. The rest of the order passed by the Tribunal is hereby confirmed. On such deposit, the Legal representatives of the deceased claimant/Selvasekaran are permitted to withdraw their equally.



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4. With these modifications, this Civil Miscellaneous Appeal

is partly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

23.04.2024
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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

KSA



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To

1. The Motor Accident Claims Tribunal/
Additional District Court (FTC No.1),
Thoothukudi.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

**Order made in
C.M.A(MD)No.157 of 2012
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