



C.M.A.(MD) No.1545 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1545 of 2011

and

M.P(MD)No.3 of 2011

The New India Assurance Co.Ltd.,
Cantonment,
Trichy.

... Appellant

Vs.

P.Thiagarajan (deceased)
1.T.Kamalarani,
2.T.Vijayan,
3.T.Sasikumar,
4.T.Loganathan,
5.Minor.T.Hemalatha
6.M.Kumaresan

... Respondents

[R3 and R4 are declared as majors and R1 discharged from guardianship *vide* order dated 28.10.2013 in M.P.(MD)No.1 of 2013]

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 22.01.2011 and made in M.C.O.PNo.1028 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, F.T.C.No.1, Trichy and praying to set aside the same.



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C.M.A.(MD) No.1545 of 2011

For Appellant : Mr.N.Dilip Kumar
for Mr.N.Dharman

For Respondents : Mr.R.Devaraj

J U D G M E N T

The instant Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 22.01.2011 passed by the Motor Accident Claims Tribunal, Additional District Sessions Judge, FTC.No.1, Trichy in M.C.O.P.No.1028 of 2004.

2. The deceased Thiagarajan originally filed the claim petition stating that on 19.03.2004 at about 11.30 a.m, while he was proceeding in his cycle, a lorry bearing Reg.No.TN-45-B-0945, insured with the appellant-Insurance Company, which was coming in a rash and negligence manner, run over the cycle and his body, as a result of which, he had sustained severe injuries, due to which, he was hospitalised. Thereafter, the respondents impleaded themselves in the claim petition after the deceased died 2 ½ years later and also filed an amendment petition seeking compensation for the death of the said Thiagarajan.

3. The appellant/Insurance Company filed a counter stating that the



C.M.A.(MD) No.1545 of 2011

accident did not take place due to the negligence of the driver of the lorry and that in any case, the compensation claimed was excessive. The appellant/Insurance Company also filed additional counter to the amended claim petition filed by the respondents.

4. The respondents examined two witnesses and marked Exs.A1 to A7. The appellant/Insurance Company neither examined any witnesses nor marked any documents.

5. The Tribunal after taking into consideration the oral and documentary evidence held that the accident took place only due to the rash and negligent driving of the insured vehicle and also found that there was a nexus between the accident and the death of the deceased and awarded compensation on that basis. The Trial Court determined the compensation at Rs.3,26,000/-.

6. The learned counsel for the appellant/Insurance Company submitted that the claimants, though had stated that the deceased died due to the accident, had not produced any post-mortem certificate or any record to show that the deceased died due to the injuries sustained in the



C.M.A.(MD) No.1545 of 2011

accident and therefore, the Tribunal had awarded the compensation for the death of the deceased.

7. Mr.R.Devaraj, the learned counsel for the respondents/claimants submitted that the documents produced on the side of the claimants, namely, Ex.A4 and the nature of injuries sustained by the deceased are sufficient to infer that the deceased died only due to the injuries sustained in the accident and hence, prayed for dismissal of the appeal.

8. The point for consideration in the instant appeal is “Whether the Tribunal was right in holding that the death of the deceased was due to the accident and awarding compensation on that basis?”

9. This Court has carefully considered the rival submissions made by the learned counsel for the appellant Insurance Company and the learned counsel for the respondents/claimants.

10. On the side of the respondents, the wife of the deceased/Kamalarani was examined as P.W.1 and Dr.Sathishkumar was examined as P.W.2. The respondents had marked the FIR as Ex.A1 and the Wound Certificate as Ex.A2 besides other documents. It is seen from



C.M.A.(MD) No.1545 of 2011

the Ex.A1/FIR and Ex.A5/judgment passed in STC.No.1099 of 2004 that the accident took place only due to the rash and negligent driving of the driver of the offending vehicle. The manner of the accident, namely, that the lorry ran over the body of the deceased has also been established by the claimants. The appellant had not let in contrary evidence as regards the manner of the accident.

11. The entries in the Wound Certificate in Ex.A2 would show that there were lorry tyre marks on the chest of the deceased. The discharge summary in Ex.A4 would show that the ribs and the shoulder joints were fractured. Ex.A7 is the medical certificate relating to the cause of death. Though the cause of death is shown as myocardial infarction and cardio respiratory disorder, the nature of injuries, manner of accident and the treatment taken by the deceased would all go to establish that there was a nexus between the accident and the death of the deceased. The deceased was aged about 50 years at the time of accident and there is no evidence to show that he had any pre-existing disease. Therefore, this Court is of the view that the finding of the Tribunal holding that the accident caused the death of the deceased, cannot be faulted. The compensation awarded by the Tribunal under all heads are reasonable and the appellant is unable to



C.M.A.(MD) No.1545 of 2011

point out any infirmity in the quantum of compensation, namely, Rs. 3,26,000/- (Rupees Three Lakhs Twenty Six Thousand only) awarded by the Tribunal. Therefore, the appeal is dismissed and the award of the Tribunal is confirmed.

14. The appellant Insurance Company is directed to deposit Rs.3,26,000/- (Rupees Three Lakhs Twenty Six Thousand only) together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

15. On such deposit, the respondents/claimants are entitled to withdraw the aforesaid amount together with proportionate interest and costs, equally, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The respondents/claimants are directed to pay the necessary Court Fee, if any, on the award amount.

16. The sixth claimant in M.C.O.P.No.1028 of 2004/fifth respondent in C.M.A.(MD) No.1545 of 2011 was a minor when the claim



C.M.A.(MD) No.1545 of 2011

petition was filed in the year 2004. She would have attained the age of majority now. Hence, She is directed to file appropriate application for recording her majority and to withdraw her share.

In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

13.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

The Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
FTC.No.1, Trichy



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C.M.A.(MD) No.1545 of 2011

SUNDER MOHAN, J.

apd

C.M.A.(MD) No.1545 of 2011

13.08.2024