



C.M.A.(MD)No.444 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : **05.09.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.444 of 2009
and M.P(MD)Nos.1 of 2009

The Branch Manager,
United India Insurance Co., Ltd.,
Nagercoil.

... Appellant/3rd Respondent

Vs.

1.Raviraj
2.Davidraj
3.Selvaraj
4.Rajamani
5.Kanagaraj

6.Baby

7.Philomi

8.Vijayakumar

9.Sundaraj

10.The Branch Manager,
Oriental Insurance Company Ltd.,
Nagercoil

(Ex-parte in lower court)

... Respondents 1 to 7/Petitioners

...8th Respondent/2nd Respondent

..9th Respondent/4th Respondent

..10th Respondent/5th Respondent

11.Sahaya Joseph Anthony

..11th Respondent/6th Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 11.12.2006 passed in M.C.O.P.No.70 of 1998 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge) at Padmanabapuram.



C.M.A.(MD)No.444 of 2009

For Appellant : Mr.N.Murugesan
For R1 to R7 : Mr.C.K.M.Appaji
For R8 : Mr.R.Maheswaran
R9,R10 : Exparte

JUDGMENT

The above appeal challenges the quantum of compensation and the interest component awarded to the respondents 1 to 7 herein.

2. The respondents 2 and 3 along with their mother originally filed a claim petition stating that while the deceased was riding his two-wheeler, the offending two-wheeler insured with the appellant came in the opposite direction in a rash and negligent manner and dashed against the vehicle, as a result of which, the deceased was thrown away from the vehicle and sustained grievous injuries and died one day after the accident, i.e on 21.08.1998.

3. The appellant filed a counter denying the averments in the claim petition and stated that the accident took place only due to the negligence of the deceased; that in any case, the compensation awarded was excessive; that the rider of the insured vehicle did not have a valid insurance policy; and hence, they are not liable to pay compensation.



C.M.A.(MD)No.444 of 2009

4. The claimants examined P.W.1 and marked Ex.P.1 to Ex.P.5. The appellant examined R.W.1 and R.W.2 and marked Ex.R.1 to Ex.R.4.

5. The trial court, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligent riding of the two-wheeler insured with the appellant and held that the claimants are entitled to the compensation of Rs.6,23,000/- and that since the claimants restricted the claim at Rs.3,50,000/-, the Tribunal had awarded the said amount to the claimants with interest payable at the rate of 12% per annum from the date of petition till the date of payment.

6. The learned counsel for the appellant submitted that the claim petition ought not to have been entertained on the application by the respondents as they are not the dependents of the deceased; and that in any case, the compensation payable to the mother, who died pending disposal of the claim petition, should have been restricted for the loss of income suffered during her life time. The learned counsel further submitted that the interest at the rate of 12% per annum is excessive and contrary to the judgment of the Hon'ble Supreme Court of India.



C.M.A.(MD)No.444 of 2009

7. The learned counsel for the appellant relied upon the following judgment of this Court and the judgment of the Hon'ble Supreme Court of India:

i) In **New India Assurance Co. Ltd., Chennai – 1 Vs. Sasikala Devi (deceased) and two others** in C.M.A.No.1863 of 2009 order dated 16.06.2011; and

ii) In **New India Assurance Co. Ltd., Vs. Charlie and another** in Appeal(Civil)No.1862 of 2005, dated 29.03.2005.

8. The learned counsel for the respondents 1 to 7/claimants, per contra, submitted that though the Tribunal had held that the claimants are entitled to the compensation of Rs.8,97,500/-, since they restricted their claim a sum of Rs.3,50,000/- was awarded and the same is reasonable. He further submitted that the original claim was made by the mother and two dependent brothers of the deceased, and hence, the compensation cannot be restricted to the loss suffered by the mother (since deceased) during her life time. The learned counsel for the respondents 1 to 7/claimants relied upon the following judgments in support of his submissions:

i) In **N.Jayashree and others Vs. Chola mandalam Ms General**



C.M.A.(MD)No.444 of 2009

Insurance Company Ltd., in Civil Appeal No.6451 of 2021 dated 25.10.2021; and

ii) In **National Insurance Co. Ltd., Namakkal Vs. Karanamurthy (died) and 9 others** in C.M.A.No.206 of 2017;

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 instant appeal are as follows:

- a) Whether the respondents 1 to 7/claimants are entitled to maintain a claim petition; and
- b) Whether the compensation awarded by the Tribunal is just and reasonable.

11. As regards the 1st point, it is seen that, admittedly, the claim petition was initially filed by the mother of the deceased along with two brothers of the deceased, who were his dependents. The mother died one year after the accident, pending disposal of the claim petition. Thereafter, the other respondents were impleaded as the legal heirs of the deceased



C.M.A.(MD)No.444 of 2009

mother. Therefore, the original claim petition was filed by three persons claiming to be the dependents. There is no evidence let-in on the side of the appellant to hold that those three claimants were not the dependents of the deceased.

12. The Hon'ble Supreme Court of India held in **Jeyashree's** case cited supra that the mother-in-law of the deceased, who had suffered on account of the death of her son-in-law, would be entitled to realisation of compensation. While holding so, the Hon'ble Supreme Court had relied upon the earlier judgments of the Hon'ble Supreme Court and held that the brother of the deceased is entitled to maintain a petition as he is a legal representative of the deceased.

13. The appellant has not stated that two brothers, who had filed the claim petition along with the mother, were not legal representatives. In such circumstances, it cannot be said that the claim petition is not maintainable. The judgments of this Court relied upon by the learned counsel for the appellant have been rendered prior to the judgment of the Hon'ble Supreme Court in Jeyashree's case cited supra. Therefore, it cannot be held that the claim petition is not maintainable or the



C.M.A.(MD)No.444 of 2009

compensation should be restricted to the extent of the loss of income suffered during the life time of the mother. Point No.1 is answered accordingly.

14. As regards the quantum of compensation, this Court finds that the claimants had established before the Tribunal that they are entitled to the compensation under the loss of income and under the conventional heads to the tune of Rs.18,97,500/-. Even if the argument of the learned counsel for the appellant is accepted, that 50% has to be deducted towards personal expenses instead of 1/3 deducted by the Tribunal, the compensation would still exceed Rs.3,50,000/-. Therefore, this Court is of the view that the compensation awarded to the claimants at Rs.3,50,000/- is just and reasonable and no interference is called for.

15. The Tribunal had awarded interest at 12% per annum, which is excessive. This Court has been consistently awarding interest at the rate of 7.5% per annum and there cannot be any deviation in this case. Hence, the appellant would be liable to pay the compensation awarded, namely, Rs.3,50,000/- with interest at the rate of 7.5% per annum. The appellant shall deposit the said amount within a period of four weeks from the date



C.M.A.(MD)No.444 of 2009

of receipt of a copy of this judgment after deducting the amount already deposited. If the appellant had deposited any excess amount on account of the high interest rate fixed by the Tribunal, they are permitted to withdraw the excess amount. The claimants are permitted to withdraw the compensation amount on such deposit, less the amount already withdrawn by them, as per the apportionment fixed by the Tribunal.

16. In fine, this appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

05.09.2024

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

To
1. Motor Accident Claims Tribunal,
(Subordinate Judge) at Padmanabapuram.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A.(MD)No.444 of 2009

SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No.444 of 2009
and M.P(MD)Nos.1 of 2009

05.09.2024