



C.M.A(MD)No.472 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 08.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.472 of 2012

M/s.Cholamandalam MS General Insurance
Company Limited, Branch Office,
Tirunelveli.

... Appellant /
2nd Respondent

Vs.

1.Minor Pravin

2.Minor Priya

Minor respondents 1 and 2 are
represented by their grand-father
guardian and next friend third
respondent herein.

3.Palani Thevar

4.Piramu Ammal

... Respondents / Petitioners

5.Kombaraj

... Respondent / 1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the award made in M.C.O.P.No.738 of 2010, dated 05.09.2011 on the file of the Motor Accident Claims Tribunal



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(Fast Tract Court - I / Additional District Sessions Judge (Incharge)),
Tirunelveli.

For Appellant : Mr.S.Srinivas Raghavan
For R-1, R-2
& R-4 : Mr.J.Parekh Kumar
R-3 : Dismissed
For R-5 : Mr.M.Vinoth Singh Misra

JUDGMENT

The present Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.738 of 2010, dated 05.09.2011 on the file of the Motor Accident Claims Tribunal (Fast Tract Court - I / Additional District Sessions Judge [Incharge]), Tirunelveli, wherein the respondents 1 to 4 have filed claim petition before the Tribunal as against the fifth respondent and appellant herein.

2. The Tribunal has awarded a sum of Rs.4,60,000/- towards compensation at the rate of 8% interest per month from the date of filing of the petition till the date of realisation. Aggrieved by the order of the Tribunal, the second respondent has filed the present Civil Miscellaneous Appeal.



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3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the case are as follows:

On 27.01.2010 at about 9.15, the deceased Paramakshi was travelling in an auto bearing Registration No.TN 72 AB 6799 belonging to the first respondent and insured with the second respondent. At the time, the driver of the auto drove the vehicle in a rash and negligent manner, she was thrown out from the auto and sustained grievous injury all over the body and thereafter, she died in the hospital. The petitioners 1 and 2 are children of the deceased. Petitioners 3 and 4 are in-laws of the deceased. The deceased was aged about 29 years at the time of accident and she was doing cooli work for a sum of Rs.6,000/- per month. Hence, the petitioners claim a sum of Rs.10,00,000/- towards compensation.

5. The brief facts of the counter filed by the second respondent are as follows:

The averments made in the petition are denied as false. The respondents denied age, occupation and monthly income of the deceased



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and also denied the negligence on the part of the driver of the first respondent. There is a violation of breach of conditions of policy, since in the said auto more than 13 persons had travelled. Thereby, the second respondent is not liable to pay any compensation to the petitioners.

6. In order to prove the case of the petitioners before the Tribunal, the petitioners had examined as P.W.1 to P.W.3 and marked as Exhibits P.1 to P.4 and on the side of the respondents, R.W.1 and R.W.2 were examined and marked as Exhibits R.1 and R.2. One Court witness was also examined as C.W.1.

7. After evaluating the oral and documentary evidences adduced on either side, the Tribunal has awarded a sum of Rs.4,60,000/- towards compensation. As against the award passed by the Tribunal, the present Civil Miscellaneous Appeal has been preferred on various grounds.

8. The learned Counsel appearing for the appellant had contended that the accident was not took place due to the negligence on the part of the first respondent / driver and further in the auto more than 14 persons



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were travelled and thereby, there is a clear violation of conditions of policy. But in spite of the Tribunal has awarded compensation and ordered to the second respondent to pay the award amount and thereafter recover from the first respondent. But the petitioners 3 and 4 are not the dependents of the deceased and they are not entitled to get the award amount. But the Tribunal has erroneously awarded compensation. Hence, the award passed by the Tribunal is liable to set aside.

9. The learned Counsel appearing for the respondents 1 to 4 / claimants had contended that the accident took place was due to the rash and negligence on the part of the driver of the first respondent. Already the Tribunal has awarded fair compensation and ordered to pay and recover and the petitioners are the dependents of the deceased. Though the petitioners 3 and 4 are in-laws, they are also depending upon the income of the deceased, thereby, they are also entitled to get compensation. The Tribunal after taking into consideration of all aspects correctly awarded a fair compensation. Thereby the appeal is liable to be dismissed.



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10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

11. In this case, there is no dispute with regard to the negligence on the part of the driver of the first respondent. The respondent also not denied the accident. The petitioners had examined the eye witness of the accident and they proved the negligence on the part of the driver of the first respondent. The main contention of the appellant Insurance Company is that on the date of accident, in the auto, more than 14 persons travelled and therefore, there is a clear violation of conditions of policy. The Tribunal in this context after elaborate discussion awarded compensation and ordered to pay and recovery. The respondents have failed to examine any witnesses and also the Tribunal relied upon the evidence of Court witness and fairly came to be a conclusion that the accident took place while the deceased was travelling in the auto. There is no any contra evidence adduced by the respondent and thereby the evidence of petitioner's side are reliable and acceptable. The contention of the



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appellant is that the second respondent is not liable to pay any compensation to the petitioner since there is a violation of condition of policy.

12. As far as petitioners are concerned, they are third parties to the Insurance Company and there is no contravention that the third respondent / first respondent / vehicle was insured with appellant / second respondent Company. Thereby the appellant can pay the award amount to the respondents 1 to 4 / petitioners / claimants and then can recover the same from the fifth respondent / first respondent owner of the vehicle. The Tribunal also taken into consideration in all aspects, awarded for pay and recovery. Therefore, the order of the Tribunal is liable to be confirmed in respect of the order for pay and recovery. As far as the quantum is concerned, there is no dispute with regard to the quantum and the learned Counsel appearing for the appellant only brought to the knowledge of the Court that the petitioners 3 and 4 are not the dependents of the deceased and they are in-laws of the deceased and they are not entitled to get any compensation. On a careful perusal of the award it appears that the Tribunal has awarded a sum of Rs.30,000/- each to the petitioners 3 and 4



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by holding that they are of the dependents of the deceased. Considering the relationship of the parties, petitioners 1 and 2 are minors, who are the legal heirs of the deceased and the petitioners 3 and 4 are added as dependents of the deceased but no records produced that they are also dependants of the deceased and the petitioners 3 and 4 are only in-laws of the deceased they are not dependents of the deceased.

13. In view of the above discussion, this Court is inclined to apportion the award amount only to the petitioners 1 and 2, who are the minor children of the deceased. Therefore, each petitioners 1 and 2 are entitled to a sum of Rs.2,30,000/- towards compensation. In view of the above said discussions, this appeal is liable to be dismissed in respect of the pay and recovery and quantum of the amount and accordingly, dismissed. But at the same time, the order of the Tribunal is liable to be modified to the effect that the petitioners 1 and 2 are each entitled to a sum of Rs.2,30,000/- and the petition is dismissed as against the petitioners 3 and 4.



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14. The appellant / second respondent has already deposited 50% of the award amount. The appellant / second respondent is directed to deposit the remaining amount within a period of two months from the date of this order. After deposit the entire amount, since the petitioners 1 and 2 are minors the award amount has to be deposited into a nationalized bank for a period of three years or till attaining majority whichever is earlier.

15. With the above said observation, this Civil Miscellaneous Appeal stands disposed of. There shall be no order as to costs.

08.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Motor Accident Claims Tribunal
(Fast Tract Court - I / Additional District
Sessions Judge (Incharge)),
Tirunelveli.

2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

BTR

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