



C.M.A.(MD).No.887 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.12.2023

PRONOUNCED ON : 05.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.887 of 2012

and

M.P.(MD)No.2 of 2012

United India Insurance Company Limited,
Through its Branch Manager,
Mattappa Street, Tenkasi.

... Appellant

Vs.

1.Samy Duraichi
2.A.Raju
3.Royal Sundaram Alliance Insurance Company Ltd.,
46, Whites Road, Chennai – 14.
4.Mani
5.S.Sudalaimuthu

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order and decree dated 12.04.2011 passed in M.A.C.O.P.No.142 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi.

For Appellant : Mr.I.Suthakaran
For 3rd Respondent : Mr.S.Srinivasa Raghavan



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For 1st Respondent : Mr.M.Saravanan
For 5th Respondent : Mr.Ananth C.Rajesh
For R2 : No Appearance
For R4 : Died

JUDGMENT

This Civil Miscellaneous Appeal is directed as against the judgment and decree on certain counts passed by the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi, in M.A.C.O.P.No.142 of 2009 dated 12.04.2011 by the appellant/5th respondent/insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.A.C.O.P.No.142 of 2009.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is the fatal case. The petitioner is the legal heir of the deceased Krishnammal. On 08.04.2009, at about 12.15 p.m, in Quilon to Tirumangalam National Highways Road, in the western side of Chockampatti O.P. Police Station which is 5 kms north east to Kadayanallur Police Station, the deceased Krishnammal and her family



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went to Sastha Temple for the Panguni Uthira Festival in an auto bearing registration No.TN-76-B-0046. While so a Maruti Omni car bearing registration No.TN-76-Y-8143 travelling from opposite dashed directly hit against the auto. The deceased Krishnammal sustained injuries and died on the way to the hospital. Kadayanallur Police registered a case in Crime No.113 of 2009 against the first respondent. Seeking compensation of Rs.10,00,000/- for the death, the claim petition has been filed by the petitioner.

4.The first respondent is the owner of the Maruti car, the second respondent is the insurance company with which the said Maruti car was insured and the third respondent is the driver of the auto and the fourth respondent is the owner of the auto. The fifth respondent is the insurance company with which the auto was insured. The fifth respondent had filed a counter refuting each and every allegations in the claim petition and an additional counter was also filed by the second respondent pleading that the auto was overloaded at the time of accident. The total number of eight persons travelled in the said auto. As the result of which, the driver lost control and had caused the accident. Hence, it is not necessary for



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the insurance company to indemnify the insurer. The fifth respondent has further pleaded that instead of four persons nine persons travelled in the auto and thus resulted in the accident.

5.The learned Tribunal has framed three issues. Four witnesses P.W.1 to P.W.4 were examined on the side of the petitioners and 23 documents Ex.P1 to Ex.P23 were marked. Four witnesses R.W.1 to R.W.4 were examined on the side of the respondents and six documents Ex.R1 to Ex.R6 were marked. The respondents 1, 3 and 4 were called absent and set exparte. On the basis of oral and documentary evidence and on the basis of arguments submitted by respective parties, the learned Tribunal proceeded to conclude that the accident had happened due to rash and negligent driving of both the vehicles and the contributory negligence is fixed on both the vehicles I.e. Auto and Maruti car. The learned Tribunal directed the respondents 2 and 5 to pay the compensation equally on 50%-50% basis. The deceased was earning Rs. 6,000/- per month. The learned Tribunal has fixed notional income of Rs. 3,000/- per month and the age of the deceased was taken as 55 years as per Ex.P5 post mortem report and the relevant factor '11' was adopted.



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The loss of dependency was calculated as Rs.3,96,000/- (Rs. 3,000x12x11). Further the Tribunal had passed the award under following heads:-

Head	Compensation awarded
(I) Loss of Dependency:	Rs.3,96,000/-
(ii) Loss of Love and affection for the petitioner :	Rs.10,000/-
(iii) Funeral Expenses:	Rs.10,000/-
Total compensation awarded:	Rs.4,16,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6.Challenging the same, the appellant/fifth respondent/insurance company has been filed this Civil Miscellaneous Appeal.

7.A critical perusal of materials available on record would prove that the learned Tribunal had gone well into the fact and passed the award by fixing the contributory negligence on both the drivers and directed the respondents 2 and 5 to pay the compensation amount equally 50% - 50% basis to the petitioners.



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8.However, at the time of arguments, the learned counsel for the seventh respondent submitted that already the entire 50% of compensation amount was deposited before the learned Tribunal.

9.In view of the same, this Court is not inclined to interfere in the award passed by the learned Tribunal. Accordingly, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Motor Accident Claims Tribunal, Additional Sub Judge,
Tenkasi.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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