



C.M.A.(MD)Nos.772 and 773 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 14.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)Nos. 772 and 773 of 2011
and M.P(MD)Nos.3 and 3 of 2011

In C.M.A(MD) No.772 of 2011:

The New India Assurance Co.Ltd.,
Rep.by its Branch Manager,
147 Salai Street,
Ramanathapuram Town

... Appellant/Respondent 2

Vs.

1.Murugavalli @ Murugeswari
2.Minor Karthick
3.Minor Suganya
4.Minor Divya
5.Minor Kayatri
6.Jeyaraj
7.Muniammal

...Respondents 1 to 5/Petitioners
..6th Respondent/Respondent No.1
..7th Respondent/Respondent No.3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.06.2010 made in M.C.O.P.No.119 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Paramakudi.

For Appellant : Mr.N.Dilip Kumar
For R1 to R5 : Mr.S.Gopinath
For R7 : Mr.D.Senthil
R6 : Died

In C.M.A(MD) No.773of 2011:

The New India Assurance Co.Ltd.,
Rep.by its Branch Manager,
147 Salai Street,Ramanathapuram Town

...Appellant/2nd Respondent

Vs.

1.Pushpam
2.Sathyamoorthy
3.Lingamuthu



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4.Valarmathi

5.Muthuchelvam

6.Jeyaraj

7.Muniammal

...Respondents 1 to 5/Petitioners

..6th Respondent/Respondent No.1

..7th Respondent/Respondent No.3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.06.2010 made in M.C.O.P.No.120 of 2007 on the file of the Motor Accident Claims Tribunal, Sub Court, Paramakudi.

In both appeals:

For Appellants : Mr.N.Dilip Kumar

For R1 to R5 : Mr.S.Gopinath

For R7 : Mr.D.Senthil

R6 : Died

COMMON JUDGMENT

Since both the appeals arise out of claim petitions filed for the death of two individuals in the same accident, they are taken up together.

2. The respondents 1 to 5, who are the legal heirs of the deceased persons, filed both the claim petitions stating that while the deceased (2 in number) were traveling in a two wheeler, the vehicle insured with the appellant, namely, a Mahindra Van, came from behind and dashed against the two wheeler, as a result of which, the deceased in both cases sustained fatal injuries.

3. The appellant/Insurance Company filed a counter denying the



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averments made in the claim petitions and submitted that the accident took place only due to the negligence of the rider of the two wheeler; that the rider of the two wheeler did not have a valid license to drive the two wheeler; that the two wheeler is not insured; and that the driver of the insured vehicle is not having a valid permit (badge) to drive the vehicle for commercial purposes and therefore, prayed for dismissal of the claim petitions.

4. The claimants examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.9. The appellant examined R.W.1 to R.W.4 and marked Ex.R.1 to Ex.R.3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.5,24,000/- in M.C.O.P.No.119 of 2007 which is under challenge in C.M.A.(MD)No. 772 of 2011 and Rs.3,78,000/- in M.C.O.P.No.120 of 2007 which is under challenge in C.M.A(MD)No.773 of 2011.

5. The learned counsel for the appellant submitted that the Tribunal had not taken into consideration the fact that the driver of the insured vehicle did not have a valid permit (badge) to use the vehicle for commercial purposes and hence, the Tribunal ought not to have directed



the appellant insurance company to pay the entire compensation amount.

The learned counsel further submitted that the quantum of compensation awarded by the Tribunal was also excessive and therefore requires reduction.

6. The owner of the insured vehicle (R6) remained exparte before the trial court. It is reported that the 6th respondent is no more. No steps have been taken to implead his legal heirs. Hence, this appeal as against the 6th respondent stands dismissed for not taking steps to implead his legal heirs.

7. The learned counsel for the claimants per contra submitted that though it is stated in the counter filed by the appellant that the driver of the insured vehicle did not have valid permit (badge) to use the vehicle for commercial purposes, no proof has been filed by the appellant and hence, the Tribunal had rightly fixed the entire liability on the appellant and that the quantum of compensation awarded by the Tribunal is just and reasonable and there is no reason to interfere with the same.

8. The issues involved in these appeals are as follows:



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a)Whether the Tribunal was right in holding that the appellant had not established that the driver of the insured vehicle did not have valid permit (badge) to use the vehicle for commercial purposes; and

b)Whether the quantum of compensation awarded is just and reasonable.

9. As regards the first question, though the appellant had examined 4 witnesses and marked Ex.R.1, it is seen that the witnesses R.W.1, R.W.2 and R.W.3 had stated that the driver of the offending vehicle did not apply for a permit (badge) in their office to use the vehicle for commercial purposes. However, they had admitted in the cross-examination that it was possible that permit (badge) could have been obtained in any other Regional Transport Office. It is seen that Ex.R.1, a letter written by the Regional Transport Officer to the trial court states that the driver of the offending vehicle had a valid license. Hence, the Tribunal had rightly concluded that in the absence of conclusive proof to show that the owner of the insured vehicle has violated the policy conditions, the appellant would be liable to pay compensation. This Court is of the view that there is no infirmity in the said findings and hence, the same is confirmed. The first question is answered accordingly.



10. As regards quantum of compensation, it is seen that the claimant in M.C.O.P.No.119 of 2007 had established the fact that the deceased was aged 35 years and was working as 'Coolie'. Therefore, the trial court had taken a notional income of Rs.3000/- for the accident that took place in the year 2004, which is just and reasonable. The Tribunal had thus awarded a total compensation of Rs.5,25,000/- under other heads, including loss of consortium and the loss of estate and funeral expenses and transport expenses, which are just and reasonable. Therefore, no interference is called for.

11. Similarly, the claimants in M.C.O.P.No.120 of 2007 have shown that the deceased was working as 'Coolie' and was earning Rs.3,000/-. Considering the fact that the age of the deceased was '50' at the time of death, the Tribunal had awarded a total compensation of Rs.3,78,000/- under the head of loss of income and under other conventional heads. There is no infirmity in the said compensation awarded by the Tribunal. The question No.2 is answered accordingly.

12. Therefore, this Court is of the view that the award of the Tribunal in both cases is just and reasonable. The appeals are liable to be



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dismissed, and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

13. The appellant is directed to deposit the compensation amount with accrued interest as awarded by the Tribunal after deducting the amount already deposited within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 to 5/claimants are permitted to withdraw the same as per the apportionment fixed by the Tribunal by filing a suitable application. As regards the amount awarded for the minor claimants, the same shall be deposited in a nationalized bank and the guardians of the minors are permitted to withdraw interest once every three months directly from the bank till they attain majority.

14.08.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. Motor Accident Claims Tribunal, Sub Court, Paramakudi.

2. The Section Officer,
V.R.Section,



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Madurai Bench of Madras High Court,
Madurai.

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SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)Nos. 772 and 773 of 2011
and M.P(MD)Nos.3 and 3 of 2011

14.08.2024