



C.M.A.(MD)No.398 of 2013

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.398 of 2013
and M.P(MD)Nos.3 of 2013

Divisional Manager,
New India Assurance Co, Ltd.,
858 Market Road,
Thajavur

... Appellant/2nd Respondent

Vs.

1.Uma Majeswari
2.Swaminathan
3.K.Manimala

...Respondents 1 & 2/Petitioners
...3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 12.10.2011 passed in M.C.O.P.No.127 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court (Special Court under Essential Commodities Act), Thanjavur.

For Appellant : Mr.N.Dilip Kumar

For R1 & R3 : No appearance

JUDGMENT

The appeal challenges the finding on negligence and the quantum of compensation awarded by the Tribunal.



C.M.A.(MD)No.398 of 2013

2. The respondents 1 and 2 filed a claim petition stating that while the deceased was riding in his two-wheeler on 18.12.2008, a bus insured with the appellant came in a rash and negligent manner from behind and dashed against the two-wheeler of the deceased, as a result of which, the deceased was thrown out of the two-wheeler and sustained fatal injuries.

3. The 3rd respondent herein/the owner of the bus filed a counter denying the averments and stated that the accident did not take place due to the negligence of the bus driver.

4. The appellant filed a counter reiterating the counter filed by the 3rd respondent and submitted that in any case, the compensation claimed was excessive.

5. Before the Tribunal, the claimants examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.14. The appellant had neither examined witnesses nor marked any documents.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash



C.M.A.(MD)No.398 of 2013

and negligent driving of the bus driver and awarded a total compensation of Rs.15,22,000/-.

7. The learned counsel for the appellant would submit that the finding on negligence is erroneous; and that the compensation awarded by the Tribunal is excessive.

8. Though notice has been served on the 3rd respondent, none has entered appearance. Mr.K.K.Senthil, has filed vakalat for the 1st respondent.

9. I have given my 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 finding on negligence by the Tribunal is justified; and
- b)Whether the quantum of compensation awarded by the Tribunal is just and reasonable.



11. As regards the first point, it is seen that the claimants had examined P.W.2, an eyewitness to the occurrence, who had clearly deposed that while the deceased was riding his bike on the left side of the road, the bus belonging to the 3rd respondent came in a rash and negligent manner from behind and dashed against the two-wheeler of the deceased, which has caused the accident. The claimants had also marked Ex.P.1 to corroborate the evidence of P.W.2. The appellant had neither examined any witness nor marked any document, as stated earlier. In the absence of any evidence produced, it cannot be said that the finding of the Tribunal on negligence is erroneous. Hence, point No.1 is answered accordingly.

12. As regards the quantum of compensation, it is seen that admittedly, the deceased was an income tax assessee, and the claimants had produced Ex.P.11, the income tax returns filed by the deceased for the assessment years 2005-2006, 2006-2007, and 2007-2008, which would show that the deceased was earning more than Rs.1 lakh per annum. The claimants had also marked Ex.P.7, to show that the deceased was doing business of lubricant oil trading in Thanjavur. Considering all the above documents, the Tribunal has fixed the notional income of the deceased at Rs.1,20,000/- per annum, which cannot be faulted. The



C.M.A.(MD)No.398 of 2013

compensation under the other heads is also just and reasonable, and there is no reason to interfere in the award. Thus, the compensation awarded by the Tribunal at Rs.15,22,000/- is reasonable. Hence, the award of the Tribunal is confirmed.

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

14. The appellant shall deposit the compensation amount after deducting the amount already deposited, with interest as awarded by the Tribunal within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the amount as per the apportionment fixed by the Tribunal.

05.09.2024

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

To

1.Motor Accident Claims Tribunal, Additional District and Sessions Court (Special Court under Essential Commodities Act), Thanjavur.

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



WEB COPY



C.M.A.(MD)No.398 of 2013

SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No.398 of 2013
and M.P(MD)Nos.3 of 2013

05.09.2024