



C.M.A.(MD)No.841 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.841 of 2013

1. M.Ramalakshmi
2. Minor M.ManjulaAppellants/Petitioners
(2nd Appellant represented by her
Mother and guardian the 1st appellant)

-VS-

1.S.Velusamy
2.The National Insurance Company Limited,
Represented by its Branch Manager,
37-C, S.N.High Road,
Opp to Head Post Office,
Tirunelveli.
3. Lakshmanan
4. Chendu
5. S.Thangapandian
6. The New India Assurance Company Limited,
Catholic Centre,
913, Main Road,
Kovilpatti. Respondents/Respondents

(Respondents 5 and 6 are *Suo Motu* impleaded
vide order of this Court dated 06.01.2017 made
in C.M.A(MD) No.841 of 2013)

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the order dated 06.01.2012 made in M.C.O.P.No. 1228 of 2003 on the file of the Motor Accidents Claims Tribunal (1st Additional District Judge) Tirunelveli.

For Appellants : Mr.A.Haja Mohideen

For R2 : Mr.S.Srinivasa Raghavan

For R6 : Mr.R.Suresh Kumar

For R1 : Dispensed with

For R3 and R4 : No appearance

For R5 : Died

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants as against the order passed in M.C.O.P.No.1228 of 2003 on the file of the Motor Accidents Claims Tribunal (1st Additional District Judge) Tirunelveli, wherein, the appellants herein have filed the petition before the Tribunal under Section 163-A of Motor Vehicle Act, for claiming compensation for the death of the husband of the first appellant and her father of the second appellant. The Tribunal has dismissed the petition. As against the order passed by the Tribunal, the present appeal has been preferred by the appellants/petitioners.



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2. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 21.12.2001, at about 09.30. p.m., when the deceased Madasamy was proceeding in an Auto bearing Registration No.TN-74-3134 towards Tirunelveli to Sankarankovil main road near Police Colony, the Auto dashed against the parked Lorry bearing Registration No.M.D.T-4038. Due to the accident, the deceased died. The deceased was working as a driver and earning a sum of Rs.3,000/- (Rupees Three Thousand only) per month and deceased was aged about 31 years on the date of accident. The first respondent Auto was insured with the Second respondent/Insurance Company and thereby, the petitioners claimed compensation of Rs.10,00,000/- (Rupees Ten Lakhs only).

3. The brief averments in the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or on facts and the same is liable to be dismissed. The second respondent denied the age, income and occupation of the deceased. The deceased himself is liable for the accident and died and the criminal case was also registered as against the deceased and



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thereby the second respondent is in no way liable for the accident. The death had occurred after eight months from the date of accident and thereby, there is no access between the death and date of accident. Thereby, the second respondent is in no way liable to pay compensation to the petitioners.

4. The brief averments made in the counter filed by the respondents 3 and 4 are as follows:

These respondents are the parents of the deceased and they are also dependants of the deceased Madasamy. Therefore, they are also entitled for compensation.

5. In order to prove the case of the petitioners, they have examined P.W. 1 to P.W.4 and marked Exhibits P.1 to P.11. On the side of the respondents, they have examined R.W.1 and R.W.2 and marked Exhibits R.1 and R.2.

6. After hearing both sides and perusing the records, the Tribunal has dismissed the petition. As against the dismissalal order, the present appeal is filed by the appellants/petitioners.



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7. In fact, originally the award was passed by the Tribunal directing the second respondent to pay the compensation amount. As against the same, the second respondent has preferred appeal in C.M.A.(MD) No.1135 of 2005. This Court has remitted back the matter to ascertain the cause of death of the deceased and then, the Tribunal has passed this impugned order by holding that the death was caused due to the accident and however, the Tribunal dismissed the petition by holding that the deceased died due to the accident and he was only responsible for the accident. Thereby, he has to file petition under the provisions of Workmen's Compensation Act. As against the order passed by the Tribunal, the present appeal has been filed by the appellants/petitioners on various grounds.

8. The learned counsel appearing for the appellants would contend that the petitioners have filed the petition under Section 163-A of the Motor Vehicle Act and thereby, the petitioners need not prove the negligence and the respondents are liable to pay compensation to the petitioners. Since the petitioners filed a petition under Section 163-A of Motor Vehicles Act, the appellants/petitioners are entitled to a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation under the amended Motor Vehicles Act.



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But, the Tribunal failed to consider the said aspects. As per the direction of the Hon'ble High Court, the case was remanded back to ascertain the cause of death, whether the death was caused due to the accident. However, the Tribunal erroneously held that the death was caused due to the accident but accident took place only due to the negligence on the part of the deceased and thereby, he has to file application under the provisions of Workmen's Compensation Act. Therefore, the order passed by the Tribunal is liable to be set aside.

9. The learned counsel appearing for the second respondent would contend that the deceased himself invited the accident by his negligent driving and thereby, the petitioners are not entitled to compensation and the respondents are not liable to pay any compensation to the petitioners.

10. The learned counsel appearing for the sixth respondent would contend that the appellants/petitioners have not impleaded the petitioner in the main application and only in the present appeal, *suo motu* impleaded as respondents 5 and 6, as per the order of this Court, dated 06.01.2017. The accident was not occurred due to the negligence on the part of the driver of



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the 5th respondent and thereby, the present appeal is liable to be dismissed as against the 5th respondent.

11. This Court, after hearing the learned counsel appearing on either side and perusing the records including the order of the Tribunal, frames the following point for determination in this appeal:

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

12. In this case, it is also an admitted fact that the first respondent vehicle was insured with the second respondent and the fifth respondent vehicle was insured with the sixth respondent. In this case, the petitioners have filed a petition under Section 163-A of the Motor Vehicle Act and thereby the petitioners need not prove the negligence. The Tribunal also dismissed the petition, and held that the deceased himself invited the accident and the accident occurred due to the negligence on the part of the deceased. Since the petition is filed under Section 163-A of Motor Vehicle Act and the respondents have also not disputed the negligence on the part of the deceased and the fact that the vehicle was involved in the accident, thereby, it is



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appropriate to award compensation to the petitioners under Section 163 – A of Motor Vehicle Act. As per the second schedule of the Motor Vehicles Act.

13. According to the petitioners, the age of the deceased was 31 years. As per the second schedule, the appropriate multiplier is “17” for the age of 30 to 35 years. According to the appellants/ petitioners, the deceased was earning a sum of Rs.3,000/- (Rupees Three Thousand only) per month. The same was also not disputed and the petitioner side evidence also revealed that he was earning a sum of Rs.3,000/- (Rupees Three Thousand only) per month and thereby, this Court also taken as sum of Rs.3,000/- (Rupees Three Thousand only) per month.

14. As per second schedule, the appropriate award is Rs.5,76,000/- (Rupees Five Lakhs Seventy Six Thousand only), and 1/3 of the award amount has to be deducted, thereby award would come at Rs.3,84,000/- (Rupees Three Lakhs Eighty Four Thousand only) towards Loss of Income.

15. Apart from that, the petitioners are entitled to a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) towards Loss of Estate, a



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sum of Rs.2,000/- (Rupees Two Thousand only) towards Funeral Expenses and the petitioners are entitled to a sum of Rs.5,000/- (Rupees Five Thousand only) towards Loss of Consortium, as per IInd schedule of Motor Vehicle Act.

16. In view of the above said discussion, the appellants/petitioners are entitled to the award amount as follows:

Sl.No.	Descriptions	Amount
1.	Loss of income	Rs. 3,84,000/-
2.	Loss of Estate	Rs. 2,500/-
3 .	Funeral Expenses	Rs. 2,000/-
4.	Loss of consortium	Rs. 5,000/-
	Total	Rs.3,93,000/-

In total, the appellants/petitioners are entitled for Rs.3,93,000/- (Rupees Three Lakhs Ninety Three Thousand Five Hundred only) rounded off to Rs.4,00,000/- (Rupees Four Lakhs only) towards compensation.

17. In the result, this Civil Miscellaneous Appeal stands allowed and the order passed by the Motor Accidents Claims Tribunal (1st Additional District Judge) Tirunelveli, in M.C.O.P.No.1228 of 2003, dated 06.01.2012 is hereby set aside and the claim petition is partly allowed. The petitioners are



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entitled to award a sum of Rs.4,00,000/- (Rupees Four Lakhs only) with interest at the rate of 7.5% p.a from the date filing of the petition till realization of payment. The second respondent/ Insurance Company is directed to deposit the entire award amount within a period of two months from the date of this order. The petitioners/appellants each are entitled to a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) with proportionate interest and costs and the respondents 3 and 4 are entitled to a sum of Rs.50,000/- (Rupees Fifty Thousand only) each with proportionate interest and costs. On being deposit is made by the second respondent, the petitioners and the respondents 3 and 4 are at liberty to withdraw the same by filing appropriate application before the Tribunal. In respect of the minor claimant, the amount shall be deposited in a Nationalized Bank till she attains majority or 3 years whichever is earlier and the guardian of the minor claimant is permitted to withdraw the interest once in three months. There shall be no order as to costs.

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NCC : Yes/No
Index : Yes / No
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To

1. The Motor Accidents Claims Tribunal
(1st Additional District Judge) Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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