



C.M.A(MD)No.938 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 27.02.2024

CORAM:

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

C.M.A(MD)No.938 of 2013

and

M.P(MD)No.1 of 2013

The Divisional Manager,
United India Insurance Company Limited,
South Main Street,
Thanjavur Town.

... 2nd Respondent/Appellant

Vs.

1.K.Ananthi

2.Minor K.Saritha

3.Minor K.Ramaraj

4.Minor K.Sathyaraj

5.Minor K.Anantharaj

*(Minor respondents 2 to 5 are represented
by their mother and guardian the first
respondent)*

6.Balammal

... Claimants/Respondents 1 to 6

7.M/s.Karthick Industries,
No.12, Sivaji Nagar,
T.Nagar, Chennai

... 1st Respondent/7th Respondent



C.M.A(MD)No.938 of 2013

8.T.Raja

... 3rd Respondent/8th Respondent

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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order made in M.C.O.P.No.19 of 2004, dated 11.04.2005 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Essential Commodities Act Special Court), Thanjavur.

For Appellant : Mr.R.I.Robert Chandrakumar

For R-1 to R-6 : No appearance

R-7 & R-8 : Dismissed

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.19 of 2004 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Essential Commodities Act Special Court, Thanjavur, wherein the respondents 1 to 6 have filed claim petition for the death of Kaliyaperumal, who died in a road accident.

2. The Tribunal awarded a sum of Rs.5,49,500/- with interest at the rate of 9% per annum. As against the award passed by the Tribunal, the second respondent has filed this Civil Miscellaneous Appeal by disputing the quantum of the amount.



C.M.A(MD)No.938 of 2013

WEB COPY

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 before the Tribunal are as follows:

The first petitioner is the wife of Kaliyaperumal. Petitioners 2 to 5 are children of Kaliyaperumal. The sixth petitioner is the mother of Kaliyaperumal. On 01.10.2003 at about 01.30 pm when the said Kaliyaperumal was riding as a pillion rider in a two-wheeler bearing Registration No.TN 59 E 0039 near ECR road, Pennangupatti, Maruthi Jeep Van bearing Registration No.TN 09 A 2729 belonging to third respondent came in a rash and negligent manner and dashed against the two-wheeler. Due to which, the said Kaliyaperumal sustained grievous injury and died in the hospital. The accident was occurred due to the negligence on the part of the driver of the third respondent. The deceased was aged about 38 years on the date of accident and he was earning more than Rs.12,000/- per annum. Therefore, the petitioners have claimed compensation of Rs.10,00,000/-.



C.M.A(MD)No.938 of 2013

WEB COPY

5. The gist of the counter filed by the first respondent are as follows:

The vehicle involved in the accident is not belonged to the first respondent and the same was sold to one Raja on 03.05.2003 and the sale of that vehicle was also informed to the concerned Revenue Divisional Office through letter, dated 19.11.2003. Therefore, these petitioners are not a necessary party to the proceedings. Hence, the petition is liable to be dismissed.

6. The gist of the counter filed by the second respondent are as follows:

The averments that the accident took place due to the negligence on the part of the driver of the first respondent is denied. The accident took place due to the negligence on the part of the rider of motor vehicle. The second respondent denied the age, income and occupation of the deceased. Therefore, the second respondent is not liable to be pay any compensation to the petitioners.



C.M.A(MD)No.938 of 2013

WEB COPY

7. Before the Tribunal, this petition along with another petition No. 20 of 2004, joint trial was ordered and witnesses were examined. In one case, evidence was recorded, on the side of the petitioners, they examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.13 and on the side of the respondents, no witnesses were examined and not marked any documents.

8. The Tribunal after hearing both the sides and perusing the records, awarded a sum of Rs.5,49,500/- with interest at the rate of 9% per annum from the date of petition till the date of realization. As against the order passed by the Tribunal, the Insurance Company / second respondent has preferred this Civil Miscellaneous Appeal by disputing the quantum of the amount.

9. The learned Counsel appearing for the appellant / second respondent would contend that the accident did not take place due to the negligence on the part of the driver of the first respondent and the petitioners have not proved the age, income and occupation of the deceased. But the Tribunal has taken the monthly income of the deceased



C.M.A(MD)No.938 of 2013

as Rs.4,500/- without any basis and also adopted multiplier of 15. Thereby, awarded excess amount. Therefore, the order passed by the Tribunal is liable to be modified.

10. There is no representation on the side of the respondents.

11. This Court heard the arguments of appellant's side and perusing the materials available on record. After hearing the appellant's side and upon perusing the records including the order of the Tribunal, the point for determination in this appeal is:

i) Whether the appeal has to be allowed or not?

12. In this case, there is no dispute in respect of the negligence on the part of the first respondent driver and before the Tribunal, the petitioners have examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.13 and also marked FIR, which was registered as against the driver of the first respondent. The Tribunal after analyzing all these aspects, fixed the negligence on the part of the driver of the first respondent. The respondents have not adduced any contra evidence and thereby, the



C.M.A(MD)No.938 of 2013

WEB COPY

evidence of the petitioners' side is reliable and acceptable. According to the petitioners' side evidence, the accident took place due to the negligence on the part of the first respondent. Therefore, this Court also fixed the negligence on the part of the driver of the first respondent. The present Civil Miscellaneous Appeal also filed only on the ground of quantum and according to the appellant / second respondent, the Tribunal has taken a sum of Rs.4,500/- as monthly income without any basis. In this context, the petitioner has categorically deposed about the income of the deceased and according to the evidence of P.W.1, the deceased was earning a sum of Rs.12,000/- per month, but no documents filed to prove the income of the deceased. The Tribunal after taking into consideration of the number of dependants and the nature of the work and also cost of living, fixed a sum of Rs.4,500/- and the same is reasonable one. The Tribunal also fixed the age of the deceased as 40 as mentioned in the post-mortem certificate and adopted multiplier of 15 and also the Tribunal has deducted 1/3rd of the income and awarded a sum of Rs.5,40,000/- towards loss of income and also awarded Rs.2,000/- for funeral expenses and Rs. 2,500/- for loss of estate and Rs.5,000/- towards consortium. In total, awarded a sum of Rs.5,49,500/-. The above said award passed by the



C.M.A(MD)No.938 of 2013

WEB COPY

Tribunal is reasonable one and there is no infirmity or perversity found in the order passed by the Tribunal. Hence, the order of the Tribunal warrants no interference.

13. In view of the above said discussions, this Court is of the opinion, that this Civil Miscellaneous Appeal has no merits and deserves to be dismissed.

14. In the result, this Civil Miscellaneous Appeal stands dismissed by confirming the order of the Tribunal in M.C.O.P.No.19 of 2004, dated 11.04.2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Essential Commodities Act Special Court, Thanjavur. The appellant / second respondent is directed to deposit the entire amount as awarded by the Tribunal with interest and cost, if already not deposited. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

27.02.2024



C.M.A(MD)No.938 of 2013

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

To

- 1.The Motor Accident Claims Tribunal
(Additional District Judge, Essential Commodities
Act Special Court),
Thanjavur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Divisional Manager,
United India Insurance Company Limited,
South Main Street,
Thanjavur Town.



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C.M.A(MD)No.938 of 2013

P. DHANABAL, J.

BTR

C.M.A(MD)No.938 of 2013

27.02.2024