



C.M.A.(MD) No.579 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.579 of 2024

and

M.P.(MD) No.7353 of 2024

Oriental Insurance Company Ltd.,
Rep. by its Branch Manager,
Oriental Insurance Company,
42, P.R.P. Complex, 2nd Floor,
20, Main Road, Aundipatti,
Theni District.

... Appellant

Vs.

1.Muniyammal
W/o.Late. Shenbagamoorthy

2.S.Muneeswari
W/o.Late. Shenbagamoorthy

3.Minor.Muthulakshmi
D/o.Late. Shenbagamoorthy
Rep.by the 1st respondent being
the next friend and mother

4.Vedachi
W/o.Late.Vasavan

5.Palanikumar
S/o.Palanichamy

... Respondents



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Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree in M.C.O.P.No. 16 of 2019 on the file of the Motor Accident Claims cum Sub Court, Uthamapalayam, Theni District, dated 27.07.2023.

For Appellant : Mr.Isrel K.Mani

For R1 to R4 : Mr.G.Vanjinathan

J U D G M E N T

The instant appeal has been filed by the Insurance Company challenging the finding on negligence and the quantum of compensation awarded by the Tribunal.

2. The first to fourth respondents filed a claim petition before the Tribunal stating that on 22.01.2019, when the deceased was walking towards his house after doing agricultural coolie work, a two-wheeler insured with the appellant, Insurance Company, came from behind in a rash and negligent manner and dashed against the deceased, as a result of which the deceased sustained fatal injuries.

3. The fifth respondent herein, the owner of the two-wheeler, remained *ex parte* before the Tribunal.



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4. The appellant filed a counter before the Tribunal denying the averments made in the claim petition and stating that the deceased was in an inebriated condition and crossed the road in violation of the traffic rules, and therefore, the appellant is not liable to pay compensation, and that in any case, the compensation claimed is excessive.

5. The claimants examined P.W.1 and P.W.2 and marked Exs.P1 to P9. The appellant examined R.W.1 and R.W.2 and marked Ex.R1.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligent riding of the rider of the two-wheeler and that the appellant is liable to pay compensation of Rs.24,02,600/-.

7. The learned counsel for the appellant submitted that the Tribunal ought to have fixed the contributory negligence on the deceased as he was in an inebriated condition and crossed the road suddenly inviting the accident, and that the notional income fixed by the Tribunal at Rs.15,000/- per month is excessive and therefore prayed for reduction of the compensation.



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8. The learned counsel for claimants, per contra, submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for.

9. The points for consideration in the instant appeal are: (a) whether the Tribunal was right in fixing the entire liability on the appellant; and (b) whether the compensation awarded by the Tribunal is just and reasonable.

10. As regards the first question, it is seen that the appellant had stated in their counter that the deceased was in an inebriated condition at the time of the accident. The appellant had not established that the deceased was under the influence of alcohol, and due to that, he had crossed the road suddenly. The Rough Sketch (Ex.P4) prepared by the police during the investigation in the criminal case would suggest that the accident took place on the left side of the road, which belies the case of the appellant that the deceased attempted to cross the road. Merely because a pedestrian was in an inebriated condition, contributory negligence cannot be presumed. The award of the Tribunal holding that



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the appellant is liable to pay the entire compensation is therefore confirmed. The point no.1 is answered accordingly.

11. As regards the quantum of compensation, it is seen that the claimants had examined P.W.1, the wife of the deceased, to establish that the deceased used to take agricultural land on lease to do agriculture and sometimes was doing agricultural coolie work. The deceased was 47 years old at the time of the accident. Taking into consideration the avocation of the deceased, his age, the dependents, and the year of the accident, the Tribunal has fixed the notional income of the deceased at Rs.15,000/- per month, which cannot be faulted.

12. The award under the other heads is just and reasonable, and no interference is called for. The learned counsel for the appellant is unable to point out any infirmity in the computation made by the Tribunal as regards the loss of income. The point no.2 is answered accordingly.

13. The appellant is directed to deposit the compensation of Rs.24,02,600/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization and costs, after deducting the



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amount already deposited, if any, within a period of 4 weeks from the date of receipt of a copy of this Judgment.

14. On such deposit, the first, second, and fourth claimants are permitted to withdraw the compensation as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount already withdrawn, if any, by filing a suitable application before the Tribunal.

15. The third claimant was a minor at the time of filing the claim petition in 2019. It is noticed that she would have now attained majority. Thus, the third claimant is permitted to file an application before the Tribunal to record her majority and to withdraw her share along with proportionate interest and costs.

16. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Neutral Citation: Yes / No
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- 1.The Sub Judge,
Motor Accident Claims Tribunal,
Uthamapalayam,
Theni District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court,
Madurai.



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SUNDER MOHAN, J.

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