



C.M.A.(MD).No.190 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.12.2023

PRONOUNCED ON : 12.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.190 of 2019

Ramakrishnan (Died)

1.Tamilselvi

2.Nivetha

3.Andichiyammal

... Appellants

Vs.

1.K.Mahesbabu

2.New India Insurance Company,

Rep. By its Branch Manager,

Tiruchirappalli,

43-A/2, Juman Centre,

Promenade Road,

Cantonment,

Tiruchirappalli.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.06.2018 made in M.C.O.P.No.495 of 2011 on the file of the learned Motor Accidents Claims Tribunal, Chief Judicial Magistrate,



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Tiruchirappalli.

For Appellant : Mr.Jervin Mathew for Mr.V.Nirmalkumar
For R2 : Mr.J.S.Murali
For R1 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been directed as against the award passed by the learned Motor Accident Claims Tribunal, Chief Judicial Magistrate, at Tiruchirappalli in M.C.O.P.No.495 of 2011 dated 28.06.2018 by the appellants/petitioners challenging the quantum of the award.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.495 of 2011.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

The first petitioner is the deceased person who died during the pendency of the claim petition, the second petitioner is the wife of the deceased, the third petitioner is the minor daughter of the deceased and the fourth petitioner is the mother of the deceased. On 28.05.2010 at



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about 09.40 p.m., while the deceased namely V.Ramakrishnan was standing on the northern side of mud road margin of the east – west road opposite to Fathima Middle School, near Puthur Four Road, Trichy, a motorcycle bearing registration No.TN-09-AB-2947 belonging to the first respondent insured with the second respondent, came from east – west direction and while overtaking came to the right side, dashed against the deceased. As the result of which, the deceased fell down on the road and sustained grievous and multiple injuries and two fractures in his right leg below knees. Thus the said V.Ramakrishnan sustained permanent disability on his right leg. After the accident, he was admitted in Geethanjali Hospital, Tiruchirappalli on 28.05.2010 and discharged on 02.06.2010 and continued his treatment as out patient. The deceased person was an employee of Mangal and Mangal Metal Store, Trichy and was earning Rs.3,000/- per month at the time of his death and he was 45 years old. Due to the accident, he was not able to work, sit, stand and squat and drive two wheeler. During the pendency of the claim petition, the said V.Ramakrishnan died. From the date of accident till his date of death, the said V.Ramakrishnan was not able to discharge his job as Salesman in Mangal and Mangal Store and he lost his entire income from



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the date of accident till his death. The respondents 2 to 4 were impleaded in the said claim petition seeking a compensation of Rs.3,00,000/-.

4.The first respondent is the owner of the vehicle and the second respondent is the insurance company with which the vehicle was insured. Refuting each and every allegations made in the claim petition, the second respondent had filed a counter. That apart it was also vehemently denied in the said counter that the first respondent vehicle was not insured with the second respondent insurance company.

5.The learned Tribunal had framed three issues. Two witnesses P.W.1 and P.W.2 were examined on the side of the petitioners and Ex.P1 to Ex.P7 were marked and neither witnesses were examined nor documents were marked on the side of the respondents. The first respondent was called absent and set exparte. On the basis of the oral and documentary evidence and the arguments putforth by the petitioners and second respondent, the Tribunal proceeded to conclude that the accident happened due to the rash and negligent driving of the first respondent. Considering the arguments of the second respondent that the first



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respondent's vehicle was not insured with the second respondent insurance company, the learned Tribunal fixed the entire liability with the first respondent. However, though seven documents were marked on the side of the petitioners, the medical bills, X ray, scan report or any other medical documents which could substantiate the deceased V.Ramakrishnan suffered from continuous illness due to the accident which happened on 28.05.2010, has not been marked before the learned Tribunal. Only the discharge summary issued by Government hospital was marked as Ex.P2. Even the Doctors report was not produced before the learned Tribunal to prove the partial permanent disability suffered by the deceased.

6.In view of the same, though the deceased died after three years from the date of accident, the learned Tribunal was pleased to award a sum of Rs.12,000/- under the head of Transport and medical expenditure in the absence of medical bills and directed the first respondent to pay the same as apportioned to various petitioners by the learned Tribunal.

7.Challenging the same, the appellants/petitioners have filed this



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8.However a critical perusal of the materials on record would reveal that the learned Tribunal in the absence of medical bills and other medical documents which would prove the partial permanent disability suffered by the deceased, awarded a sum of Rs.12,000/- under the head of Transport and medical expenditure, which itself is very reasonable.

9.In view of the same, I am not inclined to interfere with the award passed by the learned Tribunal. Accordingly, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

12.01.2024

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



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To

- 1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Tiruchirappalli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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