



C.M.A(MD)No.457 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2024

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.457 of 2019

Divisional Manager,
The Oriental Insurance Company Ltd.,
Nagercoil.

... Appellant/2nd Respondent

Vs.

1.Perkmancy

2.Selvalakshmi

3.Santhanamari

4.Ramlakshmi

5.Mariammal

6.Shanmugavadivu

7.Sundari

8.Rajiv Gandhi

... Respondents/Petitioners 1-8

9.Thangavel

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the order of the tribunal of MACT cum Additional District Judge, Tenkasi made in M.C.O.P.No.71 of 2017, dated 20.03.2018.



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For Appellant : Mr.E.Chandrasekaran

For R1 - R8 : Mr.D.Srinivasaragavan

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed in M.C.O.P.No.71 of 2017 on the file of the Motor Accident Claims Tribunal cum Additional District Court, Tenkasi primarily on the ground of liability and quantum.

2. According to the claim petition, the deceased was 70 years old and he was an agriculturist and earning a sum of Rs.8,000/-. While he was walking on the road, a two wheeler driven by the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner and dashed against him. Due to the said impact, the husband of the 1st claimant had sustained grievous injuries and later passed away. The claimants have sought for a compensation of Rs.30,00,000/-.

3. The Insurance Company has filed a counter contending that the claim amount sought for is highly excessive for a person aged about 70 years old. They have further contended that there is no negligence on the part of the rider of the two wheeler. They have further pointed out that



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the claimants 2 to 7 are majors, they are married and they are residing in different places and therefore, they are not dependents of the deceased Subbaiah Nadar.

4. The tribunal after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the 1st respondent. The tribunal relying upon the postmortem certificate, arrived at a finding that the deceased was 85 years old at the time of accident. The tribunal fixed the notional monthly income at Rs.6,000/- and considering the number of dependents, 1/5th of his income was deducted towards personal expenses. The tribunal has applied the multiplier of 5 and arrived at loss of dependency at Rs.2,88,000/-. The tribunal has awarded a sum of Rs.15,000/- towards loss of estate and Rs.1,75,000/- towards loss of love and affection and for funeral and transport expenses, a sum of Rs.15,000/- has been awarded. Totally, a sum of Rs.4,93,000/- has been awarded. Challenging the said award, the present appeal has been filed by the insurance company.



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5. According to the learned counsel appearing for the insurance company, the deceased was 85 years old and the claimants, except 1st claimant, all are majors and they are living separately and therefore, they cannot be considered to be the dependents upon the deceased person. Except the wife of the deceased person, others cannot be considered to be the dependents. Hence, he prayed for allowing the appeal and set aside the award passed by the tribunal.

6. Per contra, the learned counsel appearing for the respondents / claimants had contended that though the deceased person was more than 70 years old, he was an agriculturist and he was taking care of all his family members. The sons and daughters were also depended upon him and the deceased was still taking care of his wife and other family members. Hence, he prayed for sustaining the award passed by the tribunal.

7. I have carefully considered the submissions made on either side and perused the material records.



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nature and there is no scope for any reduction in the award amount.

Hence, there are no merits in the appeal.

10. A perusal of the award indicates that interest has been awarded at the rate of 9%. Considering the fact that the accident has taken place in the year 2014, the rate of interest could be reduced to 7.5%. The award of the tribunal is set aside to the extent of reducing the rate of interest from 9% to 7.5%. In other respects, the award of the tribunal stands confirmed.

11. This Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. No costs.

27.06.2024

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

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- To
- 1.The Motor Accidents Claims Tribunal
cum Additional District Judge,
Tenkasi.
 - 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Order made in
C.M.A(MD)No.457 of 2019

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