



C.M.A(MD)No.784 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 04.07.2024

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THE HONOURABLE MRS.JUSTICE G. ILANGO VAN

C.M.A(MD)No.784 of 2023

and

C.M.P(MD)No.10894 of 2023

The New India Assurance Company Limited,
represented by its Branch Manager,
No.14-1-14L13, Santhapettai,
Ayyalur, Vedasanthur Taluk,
Dindigul District.

... Appellant / Petitioner

Vs

1.Mariammal
2.Karuppaiah
3.Selvaraj
4.Sheela
5.Saravanan

...Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act to set aside the judgment and decree passed in M.C.O.P.No.20 of 2019 dated 23.08.2021 on the file of the Motor Accidents Claim Tribunal cum Subordinate Court, Vedasanthur.



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For Appellants : Mr.M.S.Suresh Kumar

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the judgment and decree passed in M.C.O.P.No.20 of 2019 dated 23.08.2021 on the file of the Motor Accidents Claim Tribunal cum Subordinate Court, Vedasanthur.

2. The deceased mani was riding a bicycle on Trichy-Dindigul road on 13.01.2019 at about 4.45 p.m. When he was nearing the place of occurrence, a vehicle bearing registration number TN 74 Z 5378 was driven by its driver in a rash and negligent manner and turned towards western side and hit the deceased. As a result of which Mani sustained injuries. He was taken to Government Rajaji Hospital, Madurai and died on 17.01.2019 without responding to the treatments. He was aged about 50 years and working as a security in a toll gate situated at Ponnambalam and drawing a salary of Rs.15,000/- per month. Claiming compensation of Rs.20,00,000/- the dependants filed the claim petition.



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3. That was resisted by the insurance company by filing counter stating that the deceased himself was responsible for the occurrence. Apart from that conventional denials were also made in the counter. Before the Tribunal, three witnesses were examined and seven documents were marked on the side of the claimant. On the side of the respondents, two witnesses were examined and two documents were marked.

4. On the conclusion of the enquiry process, the Tribunal recorded a finding of fact with regard to the negligence aspect that it occurred only due to the rash and negligent driving on the part of the first respondent vehicle driver. Regarding the compensation, the age of the deceased was fixed at 50 years, on the basis of the entries made in the post mortem report, death certificate etc. Regarding the salary. it found that the net salary was Rs.8,170/-. Adding 25% toward future prospects, the loss of income was estimated as Rs.10,212.50/-. Multiplier 13 was adopted and after deducting 1/4 share towards personal expenses, it arrived at the total loss of dependants Rs.11,94,862.50/- to that the customary and conventional compensation were added and the compensation was fixed at Rs.12,54,862.50/- and rounded off to Rs.12,54,863/-. The compensation awarded by the Tribunal is as follows:



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1.	Loss of Dependency	Rs.11,94,863/-
2.	For love and affection	Rs. 40,000/-
3.	Funeral expenses	Rs. 20,000/-
	Total	Rs.12,54,862.50/- rounded off to Rs.12,54,863/-

5. Against which this appeal has been preferred by the appellant, on the sole ground that the first respondent vehicle driver was not owning proper driving licence. That fact was also proved before the Tribunal. The Tribunal failed to take that aspect into account.

6. Now we will go to the evidence on record on this aspect straight away. R.W.1 was examined on the side of the appellant. He was working as Junior Assistant in the office attached to RTO and he stated that on verification of records it was found that on the date of the occurrence namely 13.01.2019, the first respondent vehicle driver was not owning the proper driving licence. It was issued only with effect from 05.04.2019. When there is a specific evidence on record, the Tribunal ought to have taken that into account. The Tribunal has went on to calculate the compensation stating that



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since insurance policy was in force on the date of the occurrence, the insurance company is liable to pay the compensation.

7. There can be no quarrel on the preposition of law. Since there is violation of the policy conditions and the Motor Vehicles Act, the insurance company can be dissolved on its liability, but ofcourse, subject to the recovery of compensation from the insured. Because the claimants are third parties to the issue between the insurer and the insured. So it has been routinely followed and even as per Section 147 of Motor Vehicles Act, the insurance company has to deposit the award of the Tribunal and recover the same from the first respondent.

8. With the above said liberty, the order of the Tribunal requires interference. Therefore, the judgment and decree passed in M.C.O.P.No.20 of 2019 dated 23.08.2021 on the file of the Motor Accidents Claim Tribunal cum Subordinate Court, Vedasanthur, is modified to the effect that the appellant is directed to deposit the entire award amount as directed by the Tribunal within a period of eight weeks from the date of receipt of a copy of this order and at liberty to recover the same from the first respondent in the claim petition who



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is the fifth respondent in this Civil Miscellaneous Appeal. On such deposit, the claimants are permitted to withdraw the amount as apportioned by the Tribunal.

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition stands closed.

04.07.2024

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

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To

1.The Motor Accidents Claim Tribunal cum Subordinate Court, Vedasanthur.

2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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