



CMA.(MD)No.973 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 973 of 2021

and

CMP (MD) No. 9240 of 2021

Cholamandamal MS General
Insurance Company Ltd.,
Nos.3 & 4, Dindigul Bye Pass Road,
Kalavasal,
Madurai-625 010. : Appellant/4th Respondent

Vs.

- 1.Tmt.Vadivu
- 2.Suja
- 3.Minor Thalapathy
Rep. By his Mother and Natural
Guardian 1st respondent Tmt.Vadivu
- 4.Tmt.Pappa : Respondents 1 to 4/
Petitioners 1 to 4
- 5.G.Ramesh
- 6.M/s.IFFCO-TOKIO General Insurance
Company Ltd.,
Mani Nagar,
Palayamkottai Road,
Tuticorin,
Tamil Nadu-628 003. : Respondents 5 and 6/
Respondents 1 and 2
- 7.A.B.Michael : 7th Respondent/
3rd Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in MCOP No.492 of 2016 on the file of the Motor Accident Claims Tribunal (Principal District Court), Dindigul, dated 21/10/2019.



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For Appellant : Mrs.K.S.Shivasankari
For R1 to R4 : Mr.A.Theethar
For R5 and R7 : Dispensed with
For 6th Respondent : Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking to set aside the award, dated 21/10/2019 passed in MCOP No.492 of 2016 by the Motor Accident Claims Tribunal (Principal District Court), Dindigul, dated 21/10/2019.

2.The facts in brief:-

On 05/05/2015 at about 02.45 am, the deceased U.Perumal @ Manikandan travelled in a Omni Bus bearing registration No.PY-01-BS-3499 from Chennai to Udangudi which was driven by its driver in a rash and negligent manner and hit the back side of the Lorry bearing registration No.TN-63-AC-1699. Due to the accident, the deceased U.Perumal @ Manikandan died on the spot. The occurrence took place due to the negligence on the part of the first respondent vehicle driver as well as the third respondent vehicle driver.

3.On the date of the occurrence, the deceased was aged about 44 and working as a Driver and earning Rs.15,000/- per month. Claiming compensation of Rs.25,00,000/-, the dependents filed the claim petition.



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4.That was resisted by the 2nd respondent in the original petition stating that the driver of the third respondent vehicle alone was solely responsible for the occurrence; The manner of the occurrence itself shows the negligent driving on the part of the third respondent; the first respondent vehicle driver is noway responsible for the accident; The third respondent vehicle was parked in the middle of the road without any parking light.

5.Counter was filed by the 4th respondent containing the following averments:-

The first respondent vehicle driver was driving the vehicle in a rash and negligent manner and hit behind the parked vehicle. In the accident, the third respondent driver also died. The third respondent vehicle driver parked the vehicle on the left hand mud road portion with proper indicator or signal, etc.

6.Before the Tribunal, on the side of the claimants, 3 witnesses were examined and 5 documents were marked. On the side of the respondents, one witness was examined, but one document was marked.

7.At the conclusion of the enquiry process, the Tribunal recorded a finding that the accident took place



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at 02.45 am and there was no evidence to show that street light was found in the area and the vehicle was having indicator or light. So, it fixed the contributory negligence on the part of the 1st respondent as well as the 3rd respondent at the ratio of 75:25.

8.Regarding the compensation, the age of the deceased was fixed at 44 as per the entry made in the postmortem certificate and the notional income was fixed at Rs.9,000/- considering his job nature. To that, 25% was added towards future prospects. Thereby the annual income was calculated at Rs.1,35,000/-. 1/4th was deducted towards personal and living expenses. After that, multiplier 14 was adopted. Finally, the Loss of Dependency was arrived at Rs.14,17,500/-/-. To that, customary amount were added. In total, the following amount was awarded by the Tribunal as per the tabulation given hereunder:-

Loss of dependency	Rs.14,17,500/-
Loss of estate	Rs. 15,000/-
Loss of Love and Affection for the petitioner	Rs. 50,000/-
Loss of consortium	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Transport expenses	Rs. 10,000/-
Total	Rs.15,47,500/-



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9. Against which, this appeal is preferred by the appellant, who is shown as the 4th respondent in the main petition on the ground that the 3rd respondent parked the Lorry with all precautions and indications, in spite of that the first respondent vehicle driver in a rash negligent manner hit behind the Lorry. So, according to her, the last opportunity theory must be adopted here, because the first respondent vehicle driver was having last opportunity to avoid the accident. Had he been careful in his driving, he would have noticed the parked vehicle and would have avoided the hit, since the parked vehicle was parked with indication. She has also submitted that the vehicle was parked on the mud Road. So, according to her, the first respondent vehicle driver alone is responsible for the accident.

10. Absolutely, there is no evidence on record to show that proper indicator was fixed or shown at the time of parking. Time was at about 2.30 in the early morning, naturally the first respondent vehicle driver could not have anticipated the parking of Lorry without any indicator light.

11. The manner of the occurrence also indicates the same. Because the third respondent vehicle driver was



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standing on the road side of the Lorry attending to the repair work. He also died on the spot. This itself shows that the third respondent vehicle did not park the vehicle with proper light and precautionary signal. So, fixing liability, 75% on the part of the third respondent vehicle and 25% on the part of the second respondent vehicle cannot be found fault at all. Even if we adopt the last opportunity theory, had it occurred in light we can adopt that principle. Absolutely, it is a night occurrence. So, that principle cannot adopted in entirety to fix the responsibility on the third respondent vehicle driver. So, I find no reason to differ from the view of the Tribunal on that aspect.

12.With regard to quantum, there is no appeal or argument on both sides. The quantum is reasonably fixed by the Tribunal by taking into the nature of the job and notional income has been taken. So, I find no reason to interfere into the award of the Tribunal.

13.In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently, connected Miscellaneous petitions are closed.

12/07/2024

Index:Yes/No
Internet:Yes/No
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To,

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- 1.The Motor Accident Claims Tribunal/
Principal District Judge,
Dindigul
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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