



C.M.A.(MD).No.175 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.175 of 2021
and C.M.P.(MD).No.1483 of 2021

Royal Sundaram Alliance Insurance Co.Ltd.,
Rep. by Branch Manager,
Shor No.4, Door No.91,
2nd Floor, Sona Towers,
New Agreaharam,
Palani Road, Dindigul 624 001.

... Appellant/Respondent No.2.

Vs.

1.Muthumari
2.Thalavai Madasamy
3.Palavesam
4.Minor Pechiammal

(Represented by her mother and natural Guardian Muthumari
... Respondents 1 to 4/Petitioners

5.Thavamani

... Respondent No.5/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 26.02.2019 made in M.C.O.P.No.6 of 2015 on the file of the Motor Accident Claims Tribunal (Sub Court), Kovilpatti.



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For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : No Appearance

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JUDGMENT

This appeal has been directed against the fair and decretal order dated 26.02.2019 made in M.C.O.P.No.6 of 2015 on the file of the Motor Accident Claims Tribunal (Sub Court), Kovilpatti.

2.The facts in brief:

The deceased was riding his vehicle from East-West direction near Shanmuga theatre on 16.09.2013 at about 9.15 a.m. At that time, the first respondent drove the vehicle bearing registration No.TN 33 AB 5151 in rash and negligent manner and hit the deceased. As a result of which, the deceased sustained grievous injuries and taken to the Government Hospital, Kovilpatti, wherein, he was admitted as in-patient. But, died on 25.09.2013. The first respondent is the owner of the vehicle claiming compensation amount of Rs.38,00,000/-, application was filed.

3.The first respondent remained exparte before the Tribunal. The second respondent, who is the appellant herein contested the case on the



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ground that the deceased all of sudden tried to cross the road. On seeing the deceased who trying to cross the road, the first respondent tried to avert the accident by stopping the car applying brake and in spite of his best effort the accident could not be avoided. Regarding other aspects, the customary denials were made.

4.Before the tribunal on the side of the claimants four witnesses were examined. 9 documents were marked. On the side of the appellant, none was examined and no document was marked.

5.At the conclusion of the enquiry, the tribunal found that the occurrence took place because of the rash and negligent driving on the part of the first respondent's vehicle's driver. Accordingly, it fixed the liability. Regarding the compensation amount notional income of Rs.9,000/- was taken into account. Considering the age, the loss of income is calculated. To that customary compensation amount were added. Finally it fixed the compensation amount as Rs.14,68,900/- and directed the appellant to deposit the amount.

6.Against which this appeal is preferred.



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7.Regarding the negligent aspect except the evidence on the side of the claimant, on the side of the appellant no witness was examined. Now the occurrence is admitted by the appellant. But, what has been stated as noted above is that the deceased was suddenly tried to cross the road and in spite of best efforts made by the first respondent, the occurrence could not be averted. But, absolutely, there is no evidence on the side of the appellant on that aspect. Regarding the occurrence, the case was registered in Crime No.943 of 2013 before the East Police Station, Kovilpatti against the first respondent. So, in the absence of any direct evidence on the side of the appellant, the evidence of PW1 and the documents produced on their side must be taken into account.

8.Moreover, reading of the FIR also indicates that the first respondent drove the vehicle behind the deceased and hit him back and so the manner, in which, the occurrence said to have been taken place also indicates that it was the first respondent's fault. On this aspect the finding on fact recorded by the trial Court requires no interference. So that part is confirmed.



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9.Regarding the compensation amount also the Tribunal on the basis of the evidence of the employer namely PW3 finds that the deceased was working in a lathe. Considering the age, the notional income of Rs.9,000/- was taken into account, due to the absence of any direct evidence of correct salary. So, that amount also reasonable one and requires no interference. To that the customary amounts namely Love and affection and funeral expenses, etc. were also added as follows.

<i>1.Loss of Total Income</i>	<i>- Rs.13,68,900.00.</i>
<i>2.Loss of Love and affection</i>	
<i>towards first petitioner</i>	<i>- Rs. 40,000.00.</i>
<i>3.Loss of Love and affection</i>	
<i>towards petitioners 2 to 4</i>	
<i>(At the rate of Rs.15,000/-</i>	
<i>each)</i>	<i>- Rs. 45,000.00.</i>
<i>4.Funeral Expenses</i>	<i>- <u>Rs. 15,000.00.</u></i>
	<i>-<u>Rs. 14,68,900.00.</u></i>

On this aspect also, I find absolutely, no reason to interfere. None of the grounds raised by the appellant are acceptable.

10.Accordingly, this civil miscellaneous appeal is dismissed. No



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costs. Consequently, connected miscellaneous petition is closed.

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

- 1.The Subordinate Judge, Kovilpatti. (Motor Accident Claims Tribunal)
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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