



C.M.A(MD)No.1205 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.07.2024

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THE HONOURABLE MRS.JUSTICE G. ILANGO VAN

C.M.A(MD)No.1205 of 2023

and

C.M.P(MD)No.15976 of 2023

and

C.M.P(MD)No.4179 of 2024

The Branch Manager,
United India Insurance Co., Ltd.,
Sowhath Ali Road,
Near A.V.Higher Secondary School - 623 707,
Ramanathapuram District. ... Appellant / 2nd Respondent

Vs

1.Mariyammal
2.Kalaimurugan
3.Minor. Renugadevi
Murugesan (Died)
4.Lakshmi
5.Muthumari
6.Boominathan
7.Kaleeswari
8.Priya

...Respondents / Petitioners

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act to set aside the fair order dated 30.11.2022 passed in M.C.O.P.No.415 of 2017 on the file of Motor Accidents Claims Tribunal / Principal District Court, Dindigul.



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For Appellants : Mr.C.Karthik
For R1 to R3 : Mr.S.Pugalendhi
For R4 to R8 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the fair order dated 30.11.2022 passed in M.C.O.P.No.415 of 2017 on the file of Motor Accidents Claims Tribunal / Principal District Court, Dindigul.

2. The deceased Ganesh was travelling as a pillion rider in the vehicle bearing registration number TN 65 B 2516 which belongs to the first respondent Murugesan. When they were nearing the place of occurrence, Murugesan rode the vehicle in a rash and negligent manner both of them were fell down. The said Ganesn was taken to the Government Hospital, since he sustained grievous injuries. He was taken to Muthukulathur Government Hospital and then to Ramanathapuram Government Hospital, Madurai. Thereafter he has taken treatment at Madurai Meenakshi Mission Hospital and finally at Madurai Rajaji Hospital. But died on 22.11.2014 without responding to the treatment. Over the occurrence, a case in Crime No.212 of 2014 was registered under Section 304(A) of IPC against the rider of the two wheeler. Claiming compensation amount of Rs.20 Lakhs, the dependants filed the claim petition.



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3. That was resisted by the appellant herein by filing counter, stating that after long gap, the First Information Report was registered even after the death of Ganesan. It is a false complaint. Murugesan had no driving license to drive the vehicle. Other customary denials were made. Further, additional counter was filed stating that Murugesan was driving the vehicle in a drunken mode. So, the First Information Report itself was closed. The present vehicle is not insured with them.

4. Pending the enquiry process, Murugesan died. Their legal representatives were brought on record. They filed separate counter stating that the deceased first respondent was not under the influence of alcohol and Ganesan died due to Cardiac arrest.

5. Before the Tribunal, on the side of the claimants one (1) witness was examined and five(5) documents were marked. On the side of the respondents one(1) witness was examined and three (3) documents were marked.

6. Regarding the first aspect of negligence, the Tribunal recorded a



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finding that it occurred due to the rash and negligent driving on the part of the deceased first respondent.

7. Regarding the compensation, the age of the deceased was fixed as 45 years on the basis of the entries made in the post mortem report. Regarding the income, has taken the notional income of Rs.6,000/- in view of the non availability of documentary evidence. To that, the future prospectus was added and Multiplier 14 was adopted. To that, the customary amounts were added and finally arrived at Rs. 9,32,000/-. The details of the award passed by the Tribunal is as follows:

Particulars	Amount
Loss of dependency	Rs.8,40,000/-
Loss of consortium	Rs. 40,000/-
Loss of Love and Affection	Rs. 30,000/-
Funeral Expenses	Rs. 15,000/-
Transport Expenses	Rs. 7,000/-
Total	Rs.9,32,000/-

Against which this appeal has been preferred by the insurance company.



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8. Learned counsel for the appellant insurance company would submit that the deceased first respondent was riding a two wheeler in a drunken mode. That aspect was not taken into account by the Tribunal properly. Apart from that he was also not having proper driving licence. There was a gap of one month in lodging the complaint. The Tribunal ought to have fixed the contributory negligence at 50%.

9. Per contra, learned counsel for the respondent would submit that, finding of fact recorded by the Tribunal requires no interference in the facts and circumstances of the case.

10. Regarding the delay a mere delay is not sufficient enough to doubt the genuineness of the occurrence itself. Because enough materials are placed before this Court regarding the occurrence. The occurrence stated to have taken place on 14.10.2014. The FIR was registered on 23.11.2014. Since Ganesan died on 22.11.2014, FIR was registered on the next day on 23.11.2014. During the course of investigation, it was found that the occurrence really taken place and since the first respondent died during the course of investigation, charge was closed as abated. Second respondent is the eye witness to the occurrence has spoken about the occurrence. Believing



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the evidence of P.W.2 and investigation, the Tribunal has concluded that the occurrence really happened and it occurred due to the rash and negligent driving on the part of the deceased first respondent.

11. Absolutely I find no reason to differ from the finding of fact. So the first contention raised by the appellant is rejected. Because the appellants are having their own team of investigation officer. But it appears that no proper investigation was undertaken by them. No investigation report was also produced before the Tribunal. In the absence of any such reliable evidence, on the side of appellant, this contention cannot be accepted. Regarding the negligence, the manner in which the occurrence took place clearly indicates the rash and negligent riding on the part of the deceased first respondent. Except the vehicle which was driven by the deceased first respondent, no other vehicle was involved in this occurrence. So the question of contributory negligence does not arise at all. It is not the case of the appellant that because of the act on the part of the deceased Ganesan, the occurrence took place and also contributory negligence must also fixed upon him, is completely out of place and not correct on record. With regard to the drunk in driving aspect, it is the clear finding of the Tribunal that absolutely no evidence was placed.



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As stated by the Tribunal, the case was registered only under Section 304(A) of IPC and not for any drunken drive. Without any evidence on record, this plea is raised. The deceased first respondent was not subjected to any medical examination soon after the occurrence, probably due to the long gap in lodging the complaint. So this ground is also not available to the appellant now.

12. Regarding the absence of driving licence also, absolutely there is no evidence on record. Only negative evidence has been let in by the appellant through R.W.2 that so that their office did not issue any driving licence to the deceased first respondent. Whatever it may be, absence of driving license on the part of the deceased first respondent would have been properly brought on record by the appellant insurance company. In the absence of any such record, the contention that pay and recovery ought to have passed by the Tribunal is also out of place and cannot be taken into account. The appellant insurance company ought to have taken proper steps by issuing notice to the to the legal representatives of the first respondent who were brought on record. So this contention is also not available to the appellant insurance company at this stage. So the contention raised by the appellant deserves no



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consideration.

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13. For the reasons stated above, this Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Accidents Claims Tribunal / Principal District Court, Dindigul dated 30.11.2022 in M.C.O.P.No.415 of 2017, is confirmed. No costs. Consequently, connected miscellaneous petitions stand closed.

04.07.2024

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

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To

1.The Motor Accidents Claims Tribunal / Principal District Court, Dindigul.

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



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