



C.M.A.(MD)No.1156 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2024

CORAM:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

AND

THE HONOURABLE **MR.JUSTICE K.K.RAMAKRISHNAN**

C.M.A(MD)No.1156 of 2021

and

C.M.P.(MD)No.11103 of 2021

The Oriental Insurance Company Limited,
Through its Branch Manager,
Office at Varadarajapuram,
Cumbum

... Appellant / 3rd Respondent

-Vs-

1.Jothi

2.Arjunan

3.Amirtha Janani

... Respondents 1 to 3 / Petitioners

4.Manikandan

5.Malayalam

... Respondents 4 & 5 / Respondents 1 & 2

(Minor 3rd respondent is declared as major vide order dated 06.08.2024)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying this Court to set aside the judgment and decree dated 30.03.2021 passed in M.C.O.P.No.134 of 2018 on the file of the Motor Accident Claims Tribunal Cum I Additional District Court, Tirunelveli.

For Appellant : Mr.C.Jawahar Ravindran

For R1 to R3 : Mr.V.Sasi Kumar

For R4 & R5 : No Appearance



C.M.A.(MD)No.1156 of 2021

JUDGMENT

WEB COPY (Judgment of the Court was delivered by ***P.VELMURUGAN, J.***)

The Insurance Company is on appeal. The challenge is to the award, granting a sum of Rs.55,48,676/- (Rupees Fifty Five Lakhs Forty Eight Thousand Six Hundred and Seventy Six Only) to the respondents 1 to 3 / petitioners.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.According to the claimants, on 13.11.2017, when the deceased was walking on the mud portion in Sekkilar 2nd Street near Kalidass Petty Shop towards north at Madurai Town P.P.Kulam, a tractor bearing Registration No.TN 41 7070 belonging to the 1st respondent attached with trailer bearing Registration No.TN 60 F 0497 belonging to the 2nd respondent, which were insured with the 3rd respondent, came from just behind of the deceased without sounding horn, in a high speed and knocked down the deceased. As a result of the impact, the deceased sustained serious injuries and immediately, he was taken to the Government Rajaji Hospital at Madurai and after first-aid, he was taken to Sri Meenakshi Mission Hospital at Madurai, where best and effective



C.M.A.(MD)No.1156 of 2021

treatment was given to the deceased. However, he succumbed to his injuries in the hospital on 15.11.2017.

4. Therefore, a case was registered against the 1st respondent's driver for the offences punishable under Sections 279, 337 IPC @ 279, 304(A) IPC on the file of the Madurai Traffic Investigation Wing II Police Station, in Crime No.315 of 2017. Since the deceased was working as Head Constable in Central Reserve Police Force at Chennai and drawing monthly salary of Rs.75,830/- and a sum of Rs.5,00,000/- was incurred towards medicines and medical charges for the treatment given to the deceased, the claimants filed the petition, claiming compensation of Rs.1,50,00,000/- with 12% interest per annum.

5. The said claim was resisted by the Insurance Company, contending that the accident occurred due to the negligence of the deceased, inasmuch as the deceased crossed the road abruptly without caring the vehicle coming on the road. Further, the driver of the 1st respondent did not have any valid, effective and legal driving licence to drive the said class of vehicle. The quantum of compensation claimed was also termed as excessive.

6. At trial, on the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and Ex.P.1 to Ex.P.10 were marked. On the side of the



C.M.A.(MD)No.1156 of 2021

Insurance Company, five witnesses were examined as R.W.1 and R.W.5 and no documents were marked. However, on the side of the witnesses, 12 documents were marked as Ex.X.1 to Ex.X.12.

7.The Tribunal, upon consideration of the evidence on record, concluded that the accident occurred due to the negligence of the driver of the 1st respondent and both the tractor and trailer since were involved in the accident, which were insured with the 3rd respondent, the Insurance Company is liable to pay compensation and ultimately, awarded a sum of Rs.55,48,676/- as compensation.

8.Challenging the same, the Insurance Company has filed this appeal.

9.Though the appellant has taken a defence that the deceased also contributed negligence, since there is no pleading and evidence for that defence, the learned counsel for the appellant is not pressing the said defence.

10.The learned counsel for the appellant would submit that the offending vehicle was the tractor, which was used only for agricultural purpose, not for other purpose. Admittedly, at the time of accident, the tractor was engaged for non-agricultural purpose. Therefore, since it is the violation of the

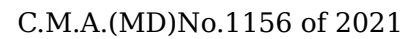


C.M.A.(MD)No.1156 of 2021

policy conditions, the Tribunal, having considered the same, ordered pay and recovery, for which, the appellant may not have any grievance.

11.As far as the quantum is concerned, the learned counsel for the appellant would submit that since the deceased was working as Head Constable, he comes under the direct payment of tax. Therefore, the Insurance Company before paying amount has to deduct income tax, if the amount is taxable income.

12.The learned counsel for the respondents 1 to 3 would submit that the accident had occurred only due to rash and negligent driving of the driver of the tractor and a case was also registered against only the tractor and there is no complaint made against the deceased, who is the pedestrian. Further, P.W.2 was the informant to the Police for registering the First Information Report and based on his information only, the case was registered and there is no contra evidence to that effect. Further, the appellant has also not denied the liability and the deceased was working as Head Constable, for which, salary certificate was also produced. The Tribunal, having considered all these facts and circumstances, applied its mind and awarded compensation, which is just and proper. Therefore, no interference is called for.



14. Admittedly, the deceased was working as Head Constable, at the time of accident and the accident occurred only due to rash and negligent driving of the driver of the tractor and there is no contra evidence. Therefore, the learned counsel for the appellant also conceded with the fact regarding the liability. Further, at the time of accident, since the tractor was engaged only for non-agricultural purpose and it is the violation of the conditions of the policy, the Tribunal ordered for pay and recovery.

15.As far as the quantum is concerned, at the time of accident, the deceased was working as Head Constable and drawing monthly salary of Rs.40,005/-. Therefore, considering his age, the Tribunal, applying multiplier of 13, awarded following amounts under various heads:-

SL.No.	Heads	Calculation
1	Loss of Income	Rs.54,08,676/-
2	Loss of Consortium	Rs.1,20,000/-
3	Funeral Expenses	Rs.15,000/-
4	Transport Expenses	Rs.5,000/-
	Total Compensation Awarded	Rs.55,48,676/-



C.M.A.(MD)No.1156 of 2021

16.It is borne out from the compensation given by the Tribunal that the compensation under loss of love and affection and loss of consortium have been combinedly given to the claimants. Hence, the same is divided under two heads. Accordingly, the second and third claimants are entitled to Rs.40,000/- each towards loss of love and affection and the first claimant is entitled to Rs.40,000/- towards loss of consortium. The compensation awarded under other heads shall remain unchanged.

17.With the above modification, this Civil Miscellaneous Appeal is dismissed. The Insurance Company is directed to deposit the entire compensation amount of Rs.55,48,676/- along with accrued interest at the rate of 7.5% from the date of petition till the date of realization, less the amount, if any already deposited, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the claimants are directed to withdraw the same without filing any formal application. No costs. Consequently, connected miscellaneous petition is closed.

[P.V.,J.] & [K.K.R.K.,J.]

06.08.2024

(2/2)

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

Yuva



C.M.A.(MD)No.1156 of 2021

To
WEB COPY

- 1.The I Additional District Court,
Motor Accident Claims Tribunal, Tirunelveli.

- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.1156 of 2021

P.VELMURUGAN, J.

AND

K.K.RAMAKRISHNAN, J.

Yuva

JUDGMENT MADE IN

C.M.A.(MD)No.1156 of 2021

06.08.2024

(2/2)