



C.M.A(MD)No.578 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 19.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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1.S.Sowdeeswari

2.S.Nandhini

3.S.Karthikeyan

4.Minor Nagarjunan

5.P.Thimmaya Gowder

... Appellants/Claimants 1 to 5

(Third Petitioner declared as Major and discharge the guardian vide Court order, dated 05.03.2013 made in M.P(MD)No.2 of 2011 in C.M.A(MD)No.SR.17515 of 2011)

(Fourth Appellant Minor is represented by his mother and guardian first appellant)

Vs.

1.A.Thirumalaisamy

2.National Insurance Company Limited,
Represented by its Branch Manager,
5-A, Sub Collector Office Road,
Opposite to District Court Buildings,
Dindigul.

... Respondents 1 & 2/Respondents 1 & 2



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(First respondent is set ex parte before the Lower Court)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order, dated 23.04.2010 made in M.C.O.P.No.853 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dindigul and direct the Tribunal to re-consider the fair and decreetal order, dated 23.04.2010 made in M.C.O.P.No.853 of 2007 by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.P.Santhanakrishnan

For R-1 : No appearance

For R-2 : Mr.S.Srinivasa Raghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.853 of 2007, dated 23.04.2010 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dindigul, wherein, the appellants herein have filed the petition for compensation for the death of one Selvaraj in a road accident.



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2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

3. The brief averments of the petition are as follows:

On 22.08.2007 at about 20.50 hours, when the deceased Selvaraj was riding in a motor cycle bearing Registration No.TN 29 F 3932 at the time, the vehicle bearing Registration No.TN 57 B 0465 belongs to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the Selvaraj. Due to which, he sustained injuries all over the body and he died on 24.08.2007 at about 09.00 pm in the Hospital. At the time of accident, he was aged about 45 years and he was earning a sum of Rs.6,000/- per month. The petitioners are the legal heirs of the deceased. Therefore, they are claiming a sum of Rs.10,00,000/- towards compensation.

4. The gist of the averments made in the counter are as follows:

The accident was not took place due to the negligence on the part of the driver of the first respondent and the same was happened due to the negligence of deceased. The age, income and occupation of the deceased



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are all denied. The investigation report of the Insurance Company reveals that the first respondent vehicle was not at all involved in the accident and the police and the first respondent colluded with the petitioners and filed their claim and steps was also taken for CBI enquiry. There is a delay of one day in lodging the complaint and the complaint was lodged against an un-identified vehicle. Therefore, the second respondent is not liable to pay compensation to the petitioners.

5. Before the Tribunal, in order to prove the case of the petitioners, the petitioners were examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.7. On the side of the respondents, R.W.1 was examined and no documents were marked.

6. After hearing both the sides and perusing the records, the Tribunal has dismissed the petition and as against the dismissal order, the present Civil Miscellaneous Appeal has been filed by the petitioners on various grounds.



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7. The learned Counsel appearing for the appellants / Claimants 1 to 5 would contend that the accident took place due to the negligence on the part of the first respondent driver and the petitioners have examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.7. On the side of the respondents, R.W.1 was examined. As per the evidence of P.W.3, the accident took place only due to the negligence on the part of the driver of the first respondent and thereby, even as per the evidence of R.W.1, an FIR was registered as against the first respondent driver and he also examined the witnesses and filed final report. Therefore, there is no evidence to rebut the petitioners' side evidence. But the Tribunal without considering the above said aspects, erroneously dismissed the petition. Therefore, the order passed by the Tribunal is liable to be set aside.

8. The learned Counsel appearing for the respondents would contend that the first respondent vehicle was not at all involved in the accident and there is a delay of one day in registering the FIR and in the FIR itself, un-identified vehicle hit against the deceased. Thereafter, the police officials colluded with the first respondent and the owner of the vehicle and the first respondent vehicle was included in the criminal case.



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Therefore, the Tribunal after analysing the evidences adduced on either side, correctly dismissed the application. Therefore, the present Civil Miscellaneous Appeal is liable to be set aside.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the points for determination in this appeal are:

- i) Whether the first respondent vehicle involved in the accident?
- ii) Whether the accident took place due to the negligence on the part of the first respondent?
- iii) Whether the appellants / petitioners are entitled to compensation as prayed for in the petition?
- iv) Whether this appeal has to be allowed or not?
- v) To what relief the parties are entitled to?

Point Nos.1 and 2:

10. In this case, according to the appellants / petitioners, the deceased died due to the accident and the first respondent vehicle dashed against him and thereby, he sustained injury and thereafter, he died. In



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order to prove the case of the petitioner, they have examined P.W.1 to P.W.3 and P.W.3 is the eye witness and he deposed about the nature of accident and involvement of vehicle in the accident. The respondents also cross-examined the witnesses and during the cross-examination, they not even suggested that the vehicle was not involved in the accident. Therefore, from the evidence of petitioners, it reveals that the accident took place due to the negligence on the part of the first respondent driver and the first respondent vehicle only involved in the accident.

11. Per contra, the respondents examined R.W.1, who is the investigation officer in this case and he also supported the case of the appellants / petitioners and he deposed that as per the complaint given by the complainant, FIR has been registered. In the FIR, it is mentioned as un-identified vehicle. However, as per the statement of eye witness P.W.3, the accident took place due to the negligence on the part of the first respondent driver. Thereafter, he examined the witnesses and filed final report. Therefore, even as per R.W.1, who was examined on behalf of the respondents he supported the petitioners' case and the available evidences shows that the first respondent vehicle was involved in the accident and



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the accident took place due to the negligence on the part of the driver of the first respondent. But the Tribunal failed to consider the above said aspects and erroneously held that the first respondent vehicle was not involved in the accident and the accident did not take place due to the negligence on the part of the driver of the first respondent. Therefore, the order passed by the Tribunal is liable to be set aside. Accordingly, the order passed by the Tribunal in respect of the involvement of vehicle and the negligence are set aside and this Court hold that the first respondent vehicle involved in the accident and the accident took place due to the negligence on the part of the first respondent driver. Thus the point Nos. 1 and 2 are answered.

Point No.3, 4 and 5:

12. Already this Court in the previous point decided that the accident took place due to the negligence on the part of the first respondent driver. There is no contravention that the second respondent vehicle was insured with the second respondent on the date of accident and thereby, both the respondents are liable to pay compensation to the petitioners. According to the petitioners, the deceased was earning a sum



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of Rs.6,000/- per month. According to the petitioner, he was working as lorry driver and he was earning a sum of Rs.6,000/- per month and also produced salary certificate. To that effect, the petitioner filed Exhibit P.7. As per Exhibit P.7, he was earning a sum of Rs.4,000/- per month. There is no contra evidence adduced in respect of the salary of the deceased.

13. Thereby, this Court also taken a sum of Rs.4,000/- as salary of the deceased per month. Since the deceased was aged about 45 years, as per *Pranay Sethi's case*, 25% has to be taken as future prospects. Thereby, the monthly income of the deceased would come to a sum of Rs.5,000/-. Now as far as the quantum is concerned, according to the petitioners, the deceased was aged about 45 years and the post-mortem report also reveals the age of the deceased, considering the age of the deceased multiplier of 14 is adopted. Considering the dependency of the deceased, 1/4th of the income has to be deducted for the personal expenses and thereby, the monthly income would come to a sum of Rs.4,000/-. The annual income would come to a sum of Rs.48,000/- by adopting the multiplier of 14, the award amount would come to a sum of Rs.6,72,000/- (Rs.48,000/- X 14) = Rs.6,72,000/-. The petitioners are entitled to a sum of Rs.15,000/- towards



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funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards consortium. In total, they are entitled to a sum of Rs.7,06,720/- rounded off to Rs.7,00,000/-.

14. In the result, this Civil Miscellaneous Appeal stands partly allowed and the petition in M.C.O.P.No.853 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Dinidul stands partly allowed and the petitioners are entitled to a sum of Rs.7,00,000/- towards compensation and the second respondent is directed to pay the above said amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization of the amount and the time for payment is two months from the date of this judgment. On deposit of the amount, the petitioners are liberty to withdraw the same. As far as minor claimant is concerned, the amount has to be deposited into a Nationalized Bank for a period of three years or till the date of attaining majority, whichever is earlier. There shall be no order as to costs.

19.02.2024



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

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



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P. DHANABAL, J.

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