



C.M.A.(MD).No.1055 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 11.12.2023

PRONOUNCED ON : 22.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1055 of 2016

and

C.M.P.(MD)No.9457 of 2016

The Manager,
New India Assurance Company Limited,
Rekha Towers, 2nd Floor,
248B, Kamarajar Road,
Madurai.

... Appellant

Vs.

1.Karuppuchamy
2.Podhumponnu
3.Arumugam
4.Packiyam
5.Murugan

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records relating to the award and decree dated 29.02.2016 passed in M.C.O.P.No.56 of 2010 by the Motor Accident Claims Tribunal (District Judge), Sivagangai and set aside the same.



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For Appellant : Mr.D.Malai Chamy
For Respondents 1 to 4 : Mr.N.Pragalathan
For R5 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been directed as against the award passed by the learned Motor Accident Claims Tribunal (District Judge), at Sivagangai in M.C.O.P.No.56 of 2010 dated 29.02.2016 by the appellant/second respondent/insurance company on certain counts.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.56 of 2010.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is a fatal case. The first petitioner is the son of the deceased Rakkammal and the petitioners 2 to 4 are the daughters of the deceased Rakkammal. On 30.04.2009, the petitioner's mother Rakkammal went to purchase vegetables from her village namely Kidakul – Palayanoor at about 11.30 a.m. While the deceased was walking along the left side of



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Palayanoor Market Main Road, an auto bearing registration No.TN-59-AA-5717 dashed against the deceased in a rash and negligent manner and as the result of which, she sustained injuries and she was taken to Palayanoor Hospital for first aid and thereafter, admitted in Madurai Rajaji Medical College Hospital wherein on 30.04.2009, she died. Seeking compensation of Rs.1,50,000/- for their mother's death, the petitioners have filed the claim petition.

4.The first respondent is the owner of the auto and the second respondent is the insurance company in which the said auto has been insured. The second respondent had filed a counter refuting each and every allegations put forth in the claim petition.

5.The learned Tribunal had framed four issues. Two witnesses P.W. 1 and P.W.2 were examined on the side of the petitioners and Ex.P1 to Ex.P5 were marked and on the side of the respondents, one witness R.W. 1 was examined and two documents Ex.R1 & Ex.R2 were marked. The first respondent was called absent and set exparte. On the basis of the oral and documentary evidence and on the basis of the arguments put



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forth by respective parties, the learned Tribunal proceeded to conclude that the accident had happened only due to the rash and negligent driving of the driver of the first respondent and hence, the respondents 1 and 2 are jointly and severely responsible for compensating the petitioners. On the basis of Ex.P2 post mortem report, the age of the deceased was arrived at 55 years by the learned Tribunal. Though the petitioners claimed that the deceased earned an amount of Rs.10,000/- through her milk business, the learned Tribunal was pleased to fix a notional income of Rs.2,500/- and arrived at the annual income of the deceased as Rs. 30,000/- (Rs.2,500x12). As per the dictum of *Sarala Varma and others v. Delhi Transport Corporation and others* reported in *AIR 2009 (SCC) 3104*, 1/3rd of the income has to be deducted for her personal expenses and a sum of Rs.20,000/- [Rs.30,000 – 10,000(30,000x1/3)] was contributed towards her family expenses. The learned Tribunal has adopted the relevant multiplier of '11' and arrived at the compensation under the head of loss of dependency as Rs.2,20,000/-(20,000x11). The learned Tribunal has passed the award under the following heads:-

Head	Compensation awarded
(I) Loss of dependency:	Rs.2,20,000/-



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(ii) Loss of love and affection:	Rs.25,000/-
(iii) Funeral Expenses:	Rs.10,000/-
(iv) Loss of Estate:	Rs.5,000/-
Total compensation awarded:	Rs.2,60,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6.Challenging the same, the second respondent insurance company has filed this Civil Miscellaneous Appeal.

7.The learned counsel for the appellant/second respondent vehemently submitted that there was no insurance coverage for the vehicle involved which caused the accident. On that score, the second respondent ought to have been exonerated by the learned Tribunal.

8.However, a critical perusal of the materials available on record would reveal that though the second respondent had submitted that the first respondent was insured with their insurance company, the same has not been proved by the first respondent by adducing proper evidence before the learned Tribunal. That apart filing of charge sheet in Crime No.14 of 2009 on the file of learned Judicial Magistrate, Manamadurai



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against the driver of the first respondent would prove that the accident happened only due to negligence of the first respondent's driver.

9.The insurance company is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw the award amount with proportionate interest after deducting any amount received by them earlier without filing any formal petition before the Tribunal. The claimants are not entitled for interest for the default period, if there is any.

10.In view of the same, I am not inclined to interfere with the award passed by the learned Tribunal. Accordingly, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

22.01.2024

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

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To

- 1.The Motor Accidents Claims Tribunal,
(District Judge), Sivagangai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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