



CMA.(MD)No.1086 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01/08/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA(MD)No.1086 of 2021

and

CMP(MD)No.10261 of 2021

The Zonal Manager,
Royal Sundaram Alliaz Insurance Co. Ltd.,
Krishna Plaza, I Floor,
No.1, Nachiappa Street,
(Behind Bus Stand),
Erode-638 001.

: Appellant/2nd Respondent

Vs.

1.Easwari

2.Suganeswaran

3.Minor Kiruthik Kumar : Respondents 1 to 3/
Petitioners 1 to 3

(Minor respondent 3 is rep.
by his Mother and Guardian
1st respondent herein)

Ramuthai (Die) : Nil/4th Petitioner

4.R.Vasanth : 4th Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order, dated 08/07/2021 made in MCOP No.147 of 2017 on the file of the Motor Accident Claims Tribunal/Principal District Judge, Dindigul.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R3 : Mr.V.Ramakrishnan

For 4th Respondent : Ex-parte



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J U D G M E N T

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This Civil Miscellaneous Appeal is filed seeking to set aside the award, dated 08/07/2021 passed in MCOP No.147 of 2017 by the Motor Accident Claims Tribunal/Principal District Judge, Dindigul.

2.The facts in brief:-

On 08/08/2016 at about 04.30 pm, the deceased Sivaji was riding his two wheeler bearing registration No.TN-57-AM-9789 on the Dindigul-Palani Road. When he was nearing the place of occurrence, a Lorry bearing registration No.TN-56-9168 was driven by its driver in a rash and negligent manner, hit against the two wheeler. As result of which, Sivaji fell down and died on the spot.

3.A case in Crime No.289 of 2016 was registered by the Thadikumbu Police Station for the offences under sections 279 and 304(A) IPC. Seeking compensation amount of Rs.10,00,000/-, the claim petition was filed before the Tribunal by the dependents.

4.That was resisted by the Insurance Company, who is the appellant herein contending that the occurrence took place because of the rash and negligent driving on the part of the deceased; He did not wear the helmet and



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found driving the vehicle in a zigzag manner and suddenly overtook the vehicle. In that process, he lost control and hit the right bumper of the first respondent vehicle. So, only the deceased owns responsibility for the occurrence. Apart from that, other customary denials were made.

5.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 8 documents were marked. On the side of the Insurance Company, one witness was examined and 6 documents were marked.

6.At the conclusion of the enquiry process, on the aspect of negligence, the Tribunal recorded a finding that the first respondent vehicle in the main petition was negligent in his driving and the responsibility fixed upon him.

7.Regarding the compensation, the age of the deceased was fixed at 55 on the basis of the entry made in the postmortem report Ex.P2. Regarding the notional income, it fixed at Rs.7,000/-. To that, 10% towards future prospects was added. Multiplier '11' was adopted. After deducting, 1/3rd towards personal and living expenses, it arrived at the figure of Rs.7,62,300/- on



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the ground of Loss of Dependency. To that, conventional amounts were added, which are indicated in the tabulation below and directed the insurer and the appellant herein jointly liable to pay the compensation.

Loss of Dependency	Rs.7,62,300/-
Loss of Estate	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Transport expenses	Rs. 10,000/-
Total	Rs.8,42,300/-

8.Against which, this appeal is preferred by the Insurance Company contending that the first respondent in the original petition is not involved in the occurrence; It is a case of hit and run; No witness was examined on the side of the claimants to prove that the first respondent vehicle was involved in the occurrence; The vehicle which hit the two wheeler fled away from that place without stopping; Since the vehicle could not be identified, the first respondent was wrongly included.

9.Per contra, the learned counsel appearing for the respondents 1 to 3 would submit that the occurrence took place because of the rash and negligent act on the part of the first respondent vehicle's driver. Regarding the compensation also, according to him, it was reasonably fixed.



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10.Regarding the first issue of whether the vehicle of the first respondent in the main petition was involved, PW2 has stated that he witnessed the occurrence and saw that the vehicle bearing registration No.TN-56-9168 was involved in the occurrence. A suggestion was made to him that he did not witness the occurrence and he was never in the place of occurrence. The deceased wife Easwari by making enquiry with the neighbours, lodged a complaint stating that her husband hit the Lorry on the right bumper proceeding in front of him. In that process, he fell down and another unidentified vehicle ran over him and speed away from that place.

11.No doubt that in the complaint, the wife of the deceased has narrated the events in like manner. But she is not the eye witness. But PW2 stated to be the witness to the occurrence. I find no reason to disbelieve his evidence.

12.The rough sketch drawn by the Investigating Officer during the course of investigation was marked as Ex.R2. Wherein, we see that the place of occurrence is noted near the central portion of the road. The road runs north south.



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13.The final report reads that during the course of investigation, it was found that the deceased in the process of overtaking the vehicle going in front of him tried to overtake it and hit the Lorry TN-56-9168 on the right side, fell down. At that time, another vehicle, which was coming in the same direction ran over him and fled away from that place. During the course of investigation, they could not find out the vehicle, which ran over the deceased. So, it was closed as 'undetected'.

14.On that account, now it is contended by the appellant that the first respondent vehicle is not involved in the occurrence and the first respondent vehicle driver is also not responsible.

15.As seen from the pleadings portion, it is seen that the deceased was riding the two wheeler from Dindigul to Palani main road. But in the complaint and the petition, it has been wrongly stated that the road runs east-west. But actually, the road runs north-south. The deceased was riding the two wheeler from Dindigul-Palani Main road. So, the left hand side will be on the western portion of the road. According to the appellant, the deceased tried to overtake the vehicle, which was



proceeding in front of him. In that process, he hit the right side of the bumper of the first respondent vehicle, which was coming in the opposite direction.

16.But, as stated above, the place of occurrence is near the centre portion of the road. Even though, he was not keeping his left margin, it appears that he was going in his direction. So, the sketch drawn by the police does not support the case of the appellant.

17.The first respondent vehicle driver was not examined as a witness before the Tribunal to substantiate their contention. It appears that the investigation went on only on the basis of the statement of the wife of the deceased, which is noted above, is factually incorrect.

18.There is no contra evidence to PW2. The story that an unidentified vehicle, which was coming in the opposite direction ran over the deceased also without any proper evidence and proof.

19.From the evidence of PW2, it stands established that the occurrence took place because of the rash and negligent driving of the first respondent vehicle driver.



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So, the findings of the Tribunal on that aspect requires no interference.

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20.Regarding the compensation amount, no argument was advanced by the appellant. Due to the absence of direct documentary evidence, the notional income was taken as Rs.7,000/-. There is no counter objection by the claimants. So, that is reasonable, considering the age as well the year of occurrence. Multiplier was properly taken as per the settled procedure and the conventional amounts were also reasonably fixed.

21.I find absolutely no reason to interfere into the award passed by the Tribunal.

22.In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently connected Miscellaneous Petition is closed.

01/08/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
Principal District Judge,
Dindigul.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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