



C.M.A.(MD).No.455 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.455 of 2018

The Oriental Insurance Company Limited,
Old No.15, New No.211,
Sekkalai Road 1st Floor,
Sathiyamoorthy Illam,
Karaikudi – 1.

... Appellant/2nd Respondent

-VS-

1. Subbulakshmi

2. Karuppiah

3. Karpagavalli

4. Vignesh

5. Tamilarasi

... Respondents 1 to 5/
Petitioners

6. Subathra
(6th Respondent is remained *ex parte*
before the lower Court)

... 6th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment made in M.C.O.P.No. 4694 of 2013, dated 10.01.2018, on the file of the Motor Accident Claims Tribunal-cum-Special District Judge (Full Additional Charge), Tiruchirappalli.



C.M.A.(MD).No.455 of 2018

For Appellant : Mr. C.Jawahar Ravindran
For Respondents : Mr.R.Sundar – for R1 to R3
: No appearance – R2, R4 and R6
: Died - R5

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award passed in M.C.O.P.No. 4694 of 2013, on the file of the Motor Accident Claims Tribunal-cum-Special District Judge (Full Additional Charge), Tiruchirappalli, on the ground that after a compromise was recorded before the Lok Adalat, the Tribunal has proceeded to pass an award on merits.

2. The respondents 1 to 5 herein as claimants have filed the above claim petition for the death of one Veeraiah, seeking a compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only).

3. A counter was filed by the Insurance Company disputing the negligence, quantum and liability.

4. Pending claim petition, the fifth claimant had passed away. When the claim petition was continuously adjourned for impleading the legal heirs of



C.M.A.(MD).No.455 of 2018

the fifth respondent, the parties have entered into a compromise and a Joint Memo of Compromise has been filed by both the parties on 08.01.2018. A perusal of the joint Compromise Memo reveals that it has been signed by the learned counsel appearing for the claimants as well as by the learned counsel appearing for the Insurance Company. The claimants 1 and 3 alone have signed in the Joint Memo of Compromise.

5. A perusal of Compromise Memo further indicates that the parties have agreed to settle the claim for a sum of Rs.8,10,000/- (Rupees Eight Lakhs and Ten Thousand only) without any interest as a full quit. The “B” diary extract of the Court reveals that the Joint Memo of Compromise has been recorded by the Court. Thereafter, the Tribunal has recorded that there is no oral evidence on the side of the respondents and closed the respondents' side evidence. The Tribunal has further recorded that arguments have been heard and it was posted “for orders” on 10.01.2018.

6. On 10.01.2018, an award has been passed granting a compensation of Rs.12,40,000/- (Rupees Twelve Lakhs and Forty Thousand only) along with interest at the rate of 7.5% per annum from the date of claim petition. Challenging the said award, the present appeal has been filed by the



C.M.A.(MD).No.455 of 2018

Insurance Company.

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7. According to the learned counsel appearing for the Insurance company, when the Joint Memo of Compromise has been signed by both the counsel and two of the claim petitioners, the Court ought not to have decided the claim petition on merits and passed an award. He further contended that the counsel for the claimants has signed in the Compromise Memo and it should be construed that it is binding upon the claimants also. Two of the claimants could not sign in the Compromise Memo, in view of the fact that they were abroad.

8. The learned counsel appearing for the appellant had relied upon the judgment of the Hon'ble Supreme Court reported in *AIR 1975 SC 1632, (Employees in relation to Monoharbahal Colliery Calcutta Vs.K.N.Mishra and others)* and the judgment of our High Court in *AIR 1983 Madras 184 (M.R.Natarajan Vs- Gnanambal Ammal)*, contend that when the counsel have implied authority to enter into a compromise, the same is binding upon the parties to the proceedings. He further contended that no objections have been raised by the parties, who had not signed the Compromise Memo.



C.M.A.(MD).No.455 of 2018

WEB COPY

9. Per contra, the learned counsel appearing for the respondents 1 to 3 herein had contended that the Joint Compromise Memo filed by the parties have not been accepted by the Tribunal, on the ground that some of the claimants have not signed the Compromise Memo and thereafter, the parties were heard by the Court and an order has been passed on merits. In such circumstances, the award of the Tribunal has to be adjudicated upon the appellate Court on merits and not based upon the Compromise Memo which was not signed by the parties. Hence, he prayed for sustaining the award passed by the Tribunal.

10. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

11. A perusal of the original Joint Memo filed by the parties on 08.01.2018 reveals that it has been signed by the counsel appearing for the claimants as well as by the counsel appearing for the Insurance Company. The claimants 1 and 3 have also signed in the Compromise Memo, in which, the parties have agreed to receive a sum of Rs.8,10,000/- as full quit without any interest and costs. Thereafter, an award has been passed on merits by the Tribunal on 10.01.2018 granting an award of Rs.12,40,000/- (Rupees Twelve



C.M.A.(MD).No.455 of 2018

Lakhs Forty Thousand only).

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12. A perusal of “B” diary indicates that the Joint Compromise Memo has not been returned or rejected by the Tribunal, but it has been taken on record. Based upon the said Joint Compromise Memo, the respondents side evidence was closed. However, the Tribunal has proceeded to pass an award on merits. When the Tribunal has chosen to accept the Joint Memo of Compromise, it should not have posted the matter for hearing the arguments or passing an award on merits.

13. The claimants who have not signed in the Compromise Memo have not raised any objections with regard to the authority of their advocate, to enter into a compromise. Therefore, the signature of the counsel for the claimants, in the compromise memo would be binding upon all the claimants. Especially, the wife of the claimant and one of the daughter of the claimant have signed in the Compromise Memo. In such circumstances, this Court is of the opinion that the award of the Tribunal granting an award for a sum of Rs. 12,40,000/- along with interest at the rate of 7.5% per annum is hereby set aside. The award is substituted as follows:



C.M.A.(MD).No.455 of 2018

WEB COPY

“ The Insurance Company is liable to pay a sum of Rs.8,10,000/- along with interest at the rate of 7.5% per annum from 11.01.2018 till the date of deposit. On such deposit being made, the first claimant shall be entitled to 40% of the award amount. The claimants 2 to 4 are entitled to each 20% of the award amount. All the claimants are entitled to withdraw the award amount by filing necessary petition before the Tribunal.”

14. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

25.07.2024

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

1. The Motor Accident Claims Tribunal-
cum-Special District Judge
(Full Additional Charge),
Tiruchirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.455 of 2018

R.VIJAYAKUMAR,J.

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C.M.A(MD)No.455 of 2018

25.07.2024