



C.M.A(MD)No.471 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **01.08.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.471 of 2018

The Divisional Manager,
The Oriental Insurance Company Limited,
Office at KJR Complex,
1st Floor, 16, North Veli Street,
Madurai-625 001.

... Appellant/2nd Respondent

Vs.

1.M.Suseela

2.M.Mageshwari

3.M.Mahendran

4.M.Balamurugan

... Respondents 1-4/1-4 Petitioners

5.M.Thirukumar

... 5th Respondent/1st Respondent

*(5th respondent remained ex parte
before the Lower Court)*

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award of Rs.9,55,689/- (Rupees Nine Lakhs Fifty Five Thousand Six Hundred and Eighty Nine only) passed in M.C.O.P.No.2699 of 2015, dated 30.11.2017 on the file of the Motor Accident Claims Tribunal cum V Additional District Judge, Madurai.



WEB COPY



C.M.A(MD)No.471 of 2018

For Appellant : Mr.K.Balasubramanian

For R-1 to R-4 : Mr.J.Barathan

For R-5 : No appearance

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award passed in M.C.O.P.No.2699 of 2015 on the file of the Motor Accident Claims Tribunal cum V Additional District Judge, Madurai, on the ground of liability and quantum.

2. As per the claimants, the victim was riding a bicycle on 22.06.2015 in Madurai-Thirumangalam Main road. At the relevant point of time, a two-wheeler owned by the first respondent and insured with the second respondent was driven in a rash and negligent manner in a wrong side of the road and dashed against the deceased person. Due to the said impact, the victim had sustained grievous injuries and later, he passed away. The claimants have further contended that the deceased was 55 years old and he was a Machinery Worker working in a Bolt Company in SIDCO, Madurai and earning a sum of Rs.10,000/- per month. The claimants have prayed for a compensation of Rs.10,00,000/-.



C.M.A(MD)No.471 of 2018

3. The Insurance Company has filed a counter contending that the two-wheeler was not having a valid insurance policy at the time of the accident and the rider of the two-wheeler was not having a valid driving license. They have further contended that originally FIR was registered as a hit and run case and later this two-wheeler has been implicated in this case only for the purpose of getting compensation. They have further contended that the said two-wheeler was not at all involved in the accident.

4. The Tribunal after considering the FIR, charge-sheet and the ocular evidence of P.W.2 and P.W.3 has proceeded to hold that the two-wheeler owned by the first respondent was involved in the accident. The Tribunal has proceeded to fix the total compensation at Rs.9,55,689/-. This order is under challenge in the present appeal.

5. According to the learned Counsel appearing for the appellant, when the FIR was registered as a hit and run case, subsequently this vehicle insured with them has been falsely implicated only for the purposes of getting compensation. It is further contended that the compensation awarded under various heads are on the higher side and



C.M.A(MD)No.471 of 2018

they have to be reduced. Hence, he prayed for allowing the appeal.

WEB COPY

6. Per contra, the learned Counsel appearing for the respondent herein has contended that the Tribunal has rightly arrived at a finding with regard to the involvement of the vehicle and the quantum of compensation is reasonable and there is no scope for any interference in the appeal.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. A perusal of Exhibit P.1 FIR reveals that it was lodged by the son of the victim. A perusal of the FIR reveals that the number of the offending vehicle was not mentioned in the said FIR. However, in the charge-sheet laid under Exhibit P.2, vehicle number was specifically mentioned and the driver was charge-sheeted. Two ocular witnesses, P.W.2 and P.W.3 have been examined to the effect that they have witnessed the accident and the involvement of the vehicle belonging to the first respondent. Therefore, the Tribunal was right in arriving at a finding that the vehicle of the first respondent was involved in the



C.M.A(MD)No.471 of 2018

accident.

WEB COPY

9. The Tribunal has awarded a sum of Rs.50,000/- under the head of loss of happiness of life, Rs.50,000/- under the head of loss of love and affection and another sum of Rs.10,000/- under the head of loss of consortium. This Court is of the considered opinion that the award under these heads are on the higher side and this Court proceeds to award a sum of Rs.40,000/- to each one of the claimants towards loss of love and affection. Since the victim had passed away, the question of payment of compensation under the head of pain and sufferings does not arise.

10. In view of the above said discussion, the award of the Tribunal is re-assessed as follows:

S.No.	Head	Compensation
01.	Transport to Hospital	Rs.1,500/-
02.	Damages to clothing and articles	Rs.1000/-
03.	Medical Expenses	Rs.1,71,189/-
04.	Loss of pecuniary benefits	Rs.5,72,000/-
05.	Loss of love and affection 40,000 X 4	Rs.1,60,000/-
	Total	Rs.9,05,689/-



C.M.A(MD)No.471 of 2018

WEB COPY

11. The award of the Tribunal is reduced from Rs.9,55,689/- (Rupees Nine Lakhs Fifty Five Thousand Six Hundred and Eighty Nine only) to **Rs.9,05,689/- (Rupees Nine Lakhs Five Thousand Six Hundred and Eighty Nine only)**. The award amount shall carry interest at the rate of 7.5% from the date of claim petition excluding the default period, if any. Any excess amount deposited by the appellant Insurance Company shall be refunded along with accrued interest. On such deposit, the first claimant shall be entitled to withdraw 70% of the award amount. The other claimants will be entitled to withdraw each 10% of the award amount.

12. This Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

01.08.2024

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



WEB COPY

To

1.The Motor Accident Claims Tribunal cum
V Additional District Judge,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



C.M.A(MD)No.471 of 2018



WEB COPY



C.M.A(MD)No.471 of 2018

R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.471 of 2018

01.08.2024