



C.M.A.(MD)No.01 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 15.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.01 of 2017
and C.M.P(MD)No. 3 of 2017

The Branch Manager,
National Insurance Company Limited,
Jerome Building 1st Floor,
Fort Station Road, Trichy

... Appellant/2nd Respondent

Vs.

1.Madhumathi
2.Minor Vijayakumar
3.Minor.Nithyanantham
4.Minor Vijayalakshmi

... Respondents 1 to 4/Petitioners

5.A.Sathiyamoorthy

...5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2016 made in MCOP.No.244 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Kulithalai.

For Appellant	: Mr.J.S.Murali
For R1 to R4	: No appearance
For R5	: Mr.B.Jameel Arasu

JUDGMENT

The instant appeal has been filed challenging the finding on negligence and liability.



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2. The respondents 1 to 4/claimants filed a claim petition stating that while the deceased was walking on the road, a car insured with the appellant came in a rash and negligent manner and dashed against him as a result of which, he sustained grievous injuries and in spite of continuous treatment, he succumbed to the injuries on 14.04.2009.

3. The 5th respondent/owner of the insured vehicle remained exparte before the Tribunal.

4. The appellant filed a counter stating that the accident did not take place due to the negligence of the driver of the insured vehicle; that the claimants had not established nexus between the injuries suffered in the accident and the death; and in any case, the compensation claimed is excessive.

5. Before the Tribunal, the claimants examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.12. The appellant examined R.W.1 and R.W.2 and marked Ex.R.1.



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6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the nexus between the injuries and the death was established by the claimants and directed the appellant to pay a total compensation of Rs.2,27,000/-.

7. The learned counsel for the appellant submitted that the claimants had not established the manner of accident and R.W.1, the driver of the insured vehicle, had clearly stated that the deceased suddenly crossed the road and invited the accident; that therefore, the finding on negligence is erroneous; that the Tribunal also erred in holding that nexus between the injuries and death was proved by the claimants; and that in any case, the compensation awarded by the Tribunal is excessive.

8. Though respondents 1 to 4/claimants have been served, none entered appearance.

9. The learned counsel for the 5th respondent/owner of the vehicle adopted the submissions made by the learned counsel for the appellant.



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10. This Court gave its anxious consideration to the submissions and carefully perused the materials available on record.

11. The points for consideration in the instant appeal are as follows:

- i) Whether the finding of the Tribunal on negligence is justified;
- ii) Whether the claimants had established nexus between the injuries suffered by the deceased in the accident and his death; and
- iii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable.

12. As regards the 1st point, it is seen that P.W.1, the first claimant, had marked the first information report, which was registered on the basis of the complaint lodged by the deceased himself. R.W.1 is an interested witness. R.W.1 had not challenged the first information report lodged against him. In the light of the evidence adduced on the side of the claimants and since the evidence of R.W.1, who is an interested witness does not inspire confidence, this Court is of the view that the finding of the Tribunal that the accident took place due to the negligence of the driver of the insured vehicle cannot be faulted. The 1st point is



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answered accordingly.

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13. As regards the 2nd point, it is seen from the evidence of P.W.2, the Doctor, that the deceased had suffered a fracture in the thigh; that since he could not walk, he suffered bed-sore; that there was difficulty in passing urine; and that he was taking continuous treatment from 09.12.2008 and 10.04.2009. P.W.2 has also deposed that the deceased visited the hospital for treatment of the injuries suffered by him in the accident and also for treatment of other ailments including difficulty in passing urine, which was caused due to the accident. The Doctor also deposed that in spite of the treatment, the deceased died on 14.04.2009. Though the post-mortem certificate was not produced by the claimants, this Court is of the view that the evidence of P.W.2 and the nature of injuries suffered by the deceased would suggest that nexus between the injuries in the accident and the death can be inferred. The finding of the Tribunal on this aspect also cannot be faulted. The point No.2 is answered accordingly.

14. As regards the quantum of compensation, the Tribunal has granted a sum of Rs.2,27,000/- as total compensation under the various



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heads to the claimants while fixing the notional income of the deceased at Rs.4500/-. On a perusal of the award, this Court finds that the award of compensation is just and reasonable and no interference is called for. Therefore, the award of compensation is confirmed.

15. It is submitted by the learned counsel for the appellant insurance company that the entire compensation amount has already been deposited. The claimants are permitted to withdraw the compensation as per the apportionment fixed by the Tribunal by filing a suitable application before the Tribunal. As regards the amount awarded for the minor claimants, the same shall be deposited in a nationalized bank and the guardian of the minors is permitted to withdraw interest once every three months directly from the bank till they attain majority.

16. In fine, this appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

15.10.2024

Index : Yes / No
Neutral Citation : Yes / No
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To,

1. Motor Accidents Claims Tribunal, Subordinate Court, Kulithalai.

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



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SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)No.01 of 2017
and C.M.P(MD)No. 3 of 2017

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