



C.M.A.(MD)No.581 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 27.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.581 of 2017
and C.M.P(MD)No.6095 of 2017

The Branch Manager,
National Insurance Company Limited,
No.11, Jeroma Building I Floor,
Fort Station Road,
Tiruchirappalli -2

...Appellant/Respondent No.2

Vs.

1.R.Arasan
2.Arayer
3.Ramasamy
4.Vadivel
5.Vijayakumar
6.A.Kumar

... Respondents 1 to 5/Petitioners 1 to 5
... Respondent No.6/Petitioner No.6

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to modify the judgment and award dated 24.10.2009 in M.C.O.P.No.60 of 2019 on the file of the Motor Accidents Claims Tribunal/Sub Court, Pudukkottai.

For Appellant : Mr.D.Sivaraman
For R1 to R6 : No appearance

J U D G M E N T

The instant appeal has been filed challenging the finding on negligence and also the quantum of compensation awarded to the respondents 1 to 5/claimants.



2. The respondents 1 to 5, claiming to be the parents and siblings of the deceased, filed a claim petition stating that while the deceased was riding in a cycle, a lorry, insured with the appellant, came in a rash and negligent manner and caused fatal injuries to the deceased.

3. The owner of the lorry/6th respondent herein remained ex parte before the Tribunal.

4. The appellant Insurance Company filed a counter stating that the accident took place only due to the negligence of the deceased and that in any case, the compensation claimed was excessive.

5. The claimants examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.4. The appellant examined R.W.1 and they have not marked any document on their side.

6. The Tribunal, after considering the oral and documentary evidence on record, held that the accident took place only due to the negligence of the driver of the offending vehicle/6th respondent and awarded a sum of Rs.1,63,500/- and fixed the liability on the appellant.



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7. The learned counsel for the appellant submitted that the Tribunal had erroneously fixed the liability on the appellant and the award of the Tribunal in any case is excessive; that one Shanthi, claiming to be the wife of the deceased, had already filed a claim petition before the same Tribunal in M.C.O.P.No.178 of 2004; and hence, the Tribunal ought not to have entertained the 2nd claim petition.

8. The court notice was served on the respondents and none entered appearance. Heard the learned counsel appearing on behalf of the appellant and perused the records.

9. The points for consideration in this appeal are as follows:

- i) Whether the Tribunal was right in allowing the claim petition and holding that the appellant is liable to pay compensation; and
- ii) Whether the quantum of compensation is just and reasonable?

10. When the matter was taken up for hearing on 20.07.2023, this Court had called for a report from the Tribunal as to whether M.C.O.P.No.178 of 2004 was pending or any orders were passed in the said claim petition filed by the said Shanthi, who claimed to be the wife



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of the deceased. The Tribunal sent communications seeking time to trace the records in M.C.O.P.No.178 of 2004. Finally, the Tribunal had sent a communication dated 18.07.2024 stating that M.C.O.P.No.178 of 2004 on the file of the Principal Subordinate Court was dismissed for default for two times and thereafter, the case was transferred and lastly, the case was renumbered as M.C.O.P.No.82 of 2012 and on 27.03.2012, again the case was dismissed for default due to the absence of the petitioner namely, Santhi, w/o deceased Senthilkumar.

11. The learned counsel for the appellant fairly submitted on instructions that the petition filed by the said Shanthi was not restored. Further, it is also seen that the claimants herein had disputed the relationship of the said Shanthi with the deceased and hence, she was not a party in the claim petition. In such circumstances, this Court is of the view that the award of the Tribunal on the claim petition filed by the respondents 1 to 5 cannot be faulted.

12. As regards the finding on negligence, it is seen that the claimants had examined P.W.2 as an eyewitness to the occurrence, besides marking the First Information Report as Ex.P.1 and final report



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Ex.P.2 which corroborates the version of the evidence of R.W.1. The evidence of P.W.1 and other evidence on record does not inspire confidence. Hence, the finding of the Tribunal holding that the driver of the insured vehicle has ridden the vehicle in a rash and negligent manner, which is in accordance with law and therefore, confirmed.

13. As regards the quantum, it is seen that the Tribunal had taken annual income of Rs.12,000/- after deducting 1/3rd towards personal expenses, which is just and reasonable. The total compensation under the head of loss of income therefore was awarded at Rs.1,56,000/-. The Tribunal awarded Rs.7500/- under other conventional heads. The award of compensation therefore is reasonable and no interference is called for.

15. The appellant is directed to deposit the compensation amount with accrued interest within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the same as per the apportionment fixed by the Tribunal.



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

27.08.2024

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

1. The Motor Accidents Claims Tribunal/Sub Court, Pudukkottai.

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.581 of 2017
and C.M.P(MD)No.6095 of 2017

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