



C.M.A.(MD).No.813 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 03.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.813 of 2018

and

C.M.P(MD) No.9125 of 2018

M/s.Oriental Insurance Company Limited,
No.39/40, Workshop Road,
Saratha Shopping Centre,
Simmakkal,
Madurai – 625 001

... Appellant/2nd Respondent

-vs-

1. Anjammal

2. Minor Jothimani

3. Minor Jothika

4. Minor Lakshmi Priya

... Respondents 1 to 4/
Petitioners 1 to 4

(Minor respondents 2 to 4 are
represented by next friend of their
mother Anjammal)

5. Ammakkannu

W/o. Late Karuthakkannu)

... 5th Respondent/ 5th Petitioner

(Relationship of R5 amended vide
order of this Court dated 18.08.2023
made in C.M.P(MD) No.9986 of
2023 in C.M.A(MD) No.813 of
2018)



C.M.A.(MD).No.813 of 2018

6. Thirumeni

.... 6th Respondent/1st Respondent

WEB COPY

(Respondent No.6 given up)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No. 5241 of 2013, dated 06.03.2017, on the file of the learned Motor Accident Claims Tribunal-cum- Special District Judge, Trichy.

For Appellant : Mr.E.Chandrasekaran

For R1 to R5 : Mr.M.Arumugam

For R6 : given up

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. 5241 of 2013, dated 06.03.2017, on the file of the learned Motor Accident Claims Tribunal-cum- Special District Judge, Trichy, on the ground of negligence and quantum.

2. According to the claimants, the deceased was riding a two wheeler on 16.05.2013, from east to west direction and when he turned was on the southern direction in Trichy to Madurai national highways, a Car coming



3. The claimants have further contended that the deceased was a loadman, aged about 35 years, and he was earning a sum of Rs.10,000/- per month. The claimants have sought for compensation of Rs.10,00,000/- (Rupees Ten Lakhs only).

4. The Insurance Company has filed a counter contending that the two wheeler while taking a left turn towards the southern side, was driven in a rash and negligent manner without considering the vehicle coming from the opposite direction. Therefore, the entire negligence is on the part of the rider of the two wheeler. He further contended that the rider of the two wheeler did not have valid driving license at the relevant point of time.

5. The Tribunal, after considering the evidence on either side, especially, the evidence of P.W.2 had arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Car. The Tribunal has fixed the monthly income at Rs.6,000/- and has



C.M.A.(MD).No.813 of 2018

awarded a sum of Rs.8,64,000/- towards loss of income. The Tribunal has further awarded a sum of Rs.20,000/- towards funeral and transport expenses and a sum of Rs.2,00,000/- has been awarded towards loss of love and affection for the wife and three minor children and a further sum of Rs.1,00,000/- has been awarded towards loss of consortium. In total, a sum of Rs.1,84,000/- has been awarded towards compensation. Challenging the said award, the present Civil Miscellaneous Appeal has been filed.

6. According to the learned counsel appearing for the appellant the deceased was negligent in driving the two wheeler while he was entering into a four way. He further contended that the deceased was not having any driving license at the time of accident and pointed out that the award amount towards loss of love and affection and loss of consortium is on the higher side. Hence, he prayed for setting aside the award and to modify the compensation amount accordingly.

7. Per contra, the learned counsel appearing for the respondents 1 to 5 had pointed out that the accident has taken place in the year 2013. Therefore, the notional income fixed at Rs.6,000/- is on the lesser side. He further contended that no amount has been awarded towards future prospects of the



C.M.A.(MD).No.813 of 2018

deceased person, who was aged about 35 years at the time of accident. Hence, he prayed for sustaining the award passed by the Tribunal.

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

9. Pending appeal, the appellant/Insurance Company has filed C.M.P(MD) No.16871 of 2023 to receive the Chemical Analysis Report of the deceased Devaraj, to indicate that he was in a drunken state at the time of accident. The learned counsel appearing for the appellant attempted to convince this Court the accident has taken place only due to the intoxicated mood of the deceased person.

10. A perusal of the counter affidavit reveals that there is no pleadings to the said effect on the side of the Insurance Company. He also relied upon the judgment of this Court reported in **2019 (2) TNMAC 676 (K.Shanmugam Vs.V.Krishnamurthy)** to contend that whenever the injured or claimant found to be in a drunken state, contributory negligence should be attributed on their part. However, I am of the opinion that when there is no pleadings in the counter, letting in evidence and relying upon judgment to the said effect



C.M.A.(MD).No.813 of 2018

would not be much helpful to the appellant/Insurance Company.

WEB COPY

11. As far as the contention of the learned counsel appearing for the appellant with regard to the quantum of compensation is concerned, the Tribunal has fixed the notional monthly income at Rs.6,000/-. The accident has taken place in the year 2013. The judgment of the Hon'ble Supreme Court reported in ***2014(1) TNMAC 459 (SC) (Syed Sadiq, etc Vs. The Divisional Manager, United India Insurance Company)*** has fixed the notional income of a vegetable vendor at Rs.6,500/- for an accident that has taken place in the year 2008. Therefore, the award of the Tribunal does not require interference. This Court also taken into consideration, the Tribunal has not added future prospects to the notional monthly income of the deceased person. In such circumstances, the award of the Tribunal under the other heads, namely, loss of love and affection and loss of consortium also cannot be disturbed. In view of the above said facts, there are no merits in this appeal.



C.M.A.(MD).No.813 of 2018

12. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs. Consequently, connected Miscellaneous
Petition stands closed.

03.07.2024

2/2

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The Motor Accident Claims Tribunal
(Special District Court), Trichy.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.813 of 2018

R.VIJAYAKUMAR,J.

ebsi

C.M.A(MD)No.813 of 2018

03.07.2024

2/2