



CMA.(MD)No.1281 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA(MD)No.1281 of 2023

and

CMP(MD)No.17155 of 2023

The Manager,
ICICI Lombard General Insurance
Co., Ltd.,
11/1B, G.V.Complex,
3rd Floor,
Bye Pass Road, Madurai. : Appellant/2nd Respondent

Vs.

1.Thaili
2.Kavitha
3.Gomathi
4.Muthu Lakshmi
5.Chithra Devi : Respondents 1 to 5/
Claimants 1 to 5
6.Rathinam : 6th Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to call for the records pertaining to the fair order passed by the Motor Assistant Claims Tribunal/Additional District Judge, Paramakudi, in MCOP No.22 of 2020, dated 10/01/2023, set aside the same.

For Appellant : Mr.P.Pethu Rajesh

For R1 to R5 : Mr.D.Senthil

For 6th Respondent : Mr.S.Ramasamy



JUDGMENT

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This Civil Miscellaneous Appeal is filed seeking an order to set aside the fair order passed by the Motor Assistant Claims Tribunal/Additional District Judge, Paramakudi, in MCOP No.22 of 2020, dated 10/01/2023.

2.The facts in brief:-

On 09/11/2019, the deceased Ponnaiah was waiting to cross the road in the place of occurrence. At that time, a Four Wheeler bearing registration No.TN-65-AW-7068 was driven by its driver in a rash and negligent manner and dashed against the deceased Ponniah. He sustained fracture injuries and died on the spot.

3.Over the occurrence, a case in Crime No.41 of 2019 was registered on the file of the Paramakudi Town Police Station under sections 279 and 304(A) IPC against the driver of the vehicle. Claiming compensation amount of Rs.20,00,000/-, the dependents filed the claim petition.

4.That was resisted by the Appellant Insurance Company by filing a counter stating that the offending vehicle was not insured with them; Further it has been stated that the first respondent vehicle driver was careful in his driving; The deceased tried to cross over



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CMA.(MD)No.1281 of 2023

the other side negligently from the right side of the plantation. So, because of his negligence only, the occurrence has taken place. More- over, it is also stated that he is aged about 70 years and not an earning member; None was depending upon him.

5.Before the Tribunal, on the side of the claimants, 2 witnesses examined and 17 documents marked. On the side of the Insurance Company, no oral and documentary evidence was adduced.

6.At the conclusion of the trial process, regarding the first aspect of negligence, the Tribunal recorded a finding that it occurred due to the rash and negligence on the part of the first respondent vehicle driver; On the side of the claimants, the eye witness was examined as PW2.

7.The sudden crossing plea was not established by the appellant Insurance Company.

8.With regard to compensation, the income of the deceased was assessed at Rs.9,000/- per month. The age was fixed at 66. Future prospects was fixed at 10%. 1/3rd deducted towards personal and living expenses and



CMA.(MD)No.1281 of 2023

finally, Rs.5,48,800/- was assessed as Loss of Dependency. To that, as mentioned above, customary amounts were added. Finally, the compensation was calculated as noted below:-

Loss of Dependency	Rs.5,48,800/-
Loss of Consortium	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Total	Rs.6,18,800/-

9.Now the appeal is preferred by the Insurance Company stating that mere perusal of the records produced by the parties shows that the deceased jumped over the grill bar and tried to cross over the road. So, he invited the accident. When there is *prima facie* material to show the rash and negligent act on the part of the deceased, the Tribunal ought to have decided the negligence on this point.

10.Per contra, it is contended by the respondents that the driver of the offending vehicle was not examined on the side of the appellant to prove the contra evidence of PW2.

11.Final report was filed by the Investigating Officer after carrying out the investigation in a proper manner, filed the final report against the first



respondent vehicle driver. According to him, the grounds raised by the appellant are not proved before the Tribunal.

12.Regarding the compensation amount, no argument was advanced.

13.PW2 is the eye witness to the occurrence. He has stated in his affidavit evidence that the deceased was standing on the left side of the road waiting for crossing over. At that time, the occurrence said to have been taken place. It was suggested to him that the deceased was standing near the pedestrian crossing area. But nothing was suggested to him that the deceased tried to cross over the road and invited the accident.

14.As pointed by the Tribunal, there is no contra evidence from the appellant on that aspect. The sketch drawn by the Investigating Officer during the course of investigation is marked as Ex.P13 on the side of the claimants. Wherein we see that the place of occurrence is mentioned as on the southern side of the Centre median, which indicates that it is not an area marked for crossing, but the place of crossing as mentioned above, shown as left side of the east-west road. So this



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CMA.(MD)No.1281 of 2023

indicates that the deceased was standing on the left side of the centre median. The first respondent vehicle driver ought to have noticed the standing persons in the highway road. It is seen that without noticing the standing persons, he drove the vehicle. This *prima facie* indicate the rash and negligent driving on the part of the first respondent vehicle driver. The manner in which, occurrence said to have been taken place has also indicated the same. I find no reason to differ from the findings of the Tribunal.

15.Regarding the compensation as mentioned above, there was no argument on the side of the appellant. It was reasonably fixed as noted above in the tabulation, which requires no interference at the hands of this court.

16.In the result, this Civil Miscellaneous Appeal is **dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

07/06/2024

Index:Yes/No
Internet:Yes/No
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CMA.(MD)No.1281 of 2023

To,

1.The Motor Accident Claims Tribunal/
Additional District Judge,
Paramakudi.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA.(MD)No.1281 of 2023

G.ILANGOVAN, J

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CMA (MD) No.1281 of 2023

07/06/2024