



CMA(MD).No.1307 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

C.M.A.(MD)No.1307 of 2023

and

C.M.P.(MD)Nos.17437 of 2023 & 8551 of 2024

HDFC ERGO Insurance Company Limited,
Shop Nos.G3 & G4 part,
Rearside No.111, Achutha Apartment,
Bharathidasan Salai,
Cantonment,
Trichy – 01.

.... Appellant /
2nd Respondent

vs.

1.Elavarasi

2.Minor.Senthil

3.Minor.Santhosh

***R.2 & R.3 are represented by
their natural guardian and next
friend Mother Elavarsi***

4.Ananthi

... Respondents 1 to 4/
Petitioners



CMA(MD).No.1307 of 2023

5.C.Kumar (Died)

.... 5th Respondent /
1st Respondent

6.Chinnasamy

7.Kandhayee

8.Manimegalai

9.Minor Vignesh

*R.9 is represented by his mother
and natural guardian / R.8 herein
(R.6 to R.9 are brought on record as
LRs of the deceased R.5 vide order
of this Court dated 21.08.2024 made
in C.M.P(MD)Nos.9421, 9422 and
9424 of 2024)*

... Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of M.V.Act 1988, to set aside the decree and judgment in M.C.O.P.No.43 of 2019 dated 05.07.2023 on the file of Motor Accidents Claims Tribunal (Sub Court), Thuraiyur.

For Appellant : Mr.N.Shyllappakalyan

For Respondents : Mr.N.Sudhagar Nagaraj

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order dated 05.07.2023 made in M.C.O.P.No.43 of 2019 on the file of Motor Accidents Claims Tribunal (Sub Court), Thuraiyur.



CMA(MD).No.1307 of 2023

WEB COPY

2.The learned counsel appearing for the appellant / insurance company reiterated all the contentions set out in the grounds of appeal and called upon this Court to set aside the impugned award. He filed the compilation of cases in support of his contentions.

3.Per contra, the learned counsel appearing for the claimants submitted that the impugned award is well reasoned and that it does not call for interference.

4.We carefully considered the rival contentions and went through the evidence on record.

5.On 01.03.2017 at about 07.00 p.m, one Karthick (deceased) was riding a two wheeler from Aathur to Thammampatti. The two wheeler collided with another two wheeler coming from the opposite direction. In the resulting accident, Karthick as well as the pillion rider Mani fell on the ground. Karthick was shifted to Vinayaga Mission High Tech Hospital, Salem. He succumbed to his injuries on 02.03.2017. In this regard, Crime No.45 of 2017 was registered on the file of Thammampatti



CMA(MD).No.1307 of 2023

Police Station for the offences under IPC. The wife, two children as well as the mother of the deceased filed MCOP.No.43 of 2019, Motor Accidents Claims Tribunal (Sub Court), Thuraiyur. The wife of the deceased examined herself as PW.1. Ex.P1 to Ex.P17 were marked. On the side of the insurance company, two witnesses were examined. Ex.R1 to Ex.R3 were marked. Through the Court witness, as many as 4 documents were examined. It was established that the first respondent who was the rider of the offending vehicle was not having a driving license.

6.After considering the evidence on record, the Tribunal directed the insurance company to pay compensation of Rs.24,89,200/- (Rupees Twenty Four Lakhs Eighty Nine Thousand and Two Hundred only) with interest. Appropriate apportionment was also done among the claimants. The insurance company was given liberty to pay the said amount and recover the same from the first respondent / owner of the offending vehicle. Questioning this pay and recovery award, this appeal has been filed.



CMA(MD).No.1307 of 2023

7.The deceased was aged about 33 years. He was working out his life as sculptor. The Tribunal fixed his monthly income only at Rs. 12,000/- (Rupees Twelve Thousand only). Considering his age, 16 was applied as multiplier. 40% was added towards future prospects. The breakup of the compensation was as follows:

The Motor Accident Claims Tribunal awarded compensation as follows:

i) Loss of Income	Rs.24,19,200/-
ii) Love and Affection	Rs. 20,000/-
iii) Loss of Consortium (1 st Respondent)	Rs. 20,000/-
iv) Funeral Expenses	Rs. 15,000/-
v) Transport Expenses	Rs. 15,000/-

Total Compensation	Rs.24,89,200/-

8.We are clearly of the view that the amount awarded by the Tribunal is not at all excessive. The Court below had borne in mind the principles of determination of compensation laid down in leading cases such as *National Insurance Company Limited Vs Pranay Sethi (2017 (16) SCC 680)* and *Sarla Verma & Others Vs Delhi Transport*



CMA(MD).No.1307 of 2023

Corporation & Another (2009 (6) SCC 121). The deceased was not at all at fault. It was the first respondent in MCOP who was at fault. He was also not having any driving license. Since the offending vehicle has been insured with the appellant, the appellant was obliged to pay the compensation amount and recover the same from the insured.

9.In **National Insurance Company Limited Vs Swaran Singh & Others (2004 (3) SCC 297)**, it was held that the insurance company cannot avoid its liability on the ground that the owner or driver of the insured vehicle was not having a driving license. It was specifically laid down therein that the insurance company has to satisfy the decree at the first instance and thereafter it can recover the award amount from the owner / driver of the insured vehicle.

10.The Tribunal had only passed an award in terms of the aforesaid decision. The approach adopted by the Court below cannot be faulted. Interference with the impugned award is not warranted.



CMA(MD).No.1307 of 2023

11.This Civil Miscellaneous Appeal stands dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

(G.R.S., J.) & (R.P., J.)
09.12.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To:-

The Motor Accidents Claims Tribunal (Sub Court),
Thuraiyur.



WEB COPY



CMA(MD).No.1307 of 2023

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

MGA

C.M.A.(MD)No.1307 of 2023

09.12.2024