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CMA.No.158 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.158 of 2023

1. Elumalai
2. Indira Gandhi
3. Neelavathy

... Appellants

Vs.

1. M.B.R.Shankar
2. The Divisional Manager,
Oriental Insurance Company Limited,
No.213-217, II Floor, III Main, 4th Cross,
Chamrajpet, Bangalore-18.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 aggrieved by the judgment and decree dated 15.03.2012 made in MCOP No.1234 of 2002 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Krishnagiri.

For appellants : Mr.Mukund R. Pandiyan

For Respondents : Mr.K. Vinod,
for Mr.Elaveera Ravindran
for 2nd respondent



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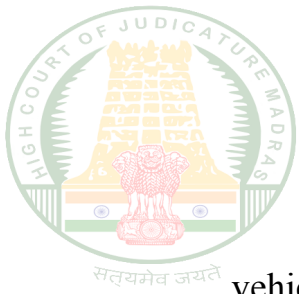
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JUDGMENT

The claimants in MCOP No.1234 of 2002 on the file of the Principal District Judge, Krishnagiri are the appellants herein.

2. According to the claimants, their father namely Palani died in a road accident that had occurred on 14.01.2002. On that day, the deceased was travelling in a mini lorry with two gunny bags of household articles. When the mini lorry came near Igonthum Junction Road, the driver of the lorry belonging to the first respondent insured with the second respondent had driven the vehicle in a rash and negligent manner and turned to left hand side, in that process, the vehicle got capsized. As a result, the deceased sustained fatal injuries and died. Therefore, the claimants filed claim petition seeking compensation of Rs.4,00,000/-.

3. The first respondent remained *exparte* before the Tribunal. The claim petition was opposed by the second respondent, insurer of the lorry on the ground that the accident had not occurred due to the rash and negligent driving of the driver of the first respondent's



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vehicle. The insurance company also denied the age, occupation and income of the deceased and sought for dismissal of the claim petition under Section 163(A) of the Motor Vehicles Act.

4. Since the claim petition was filed under Section 163(A) of the Motor Vehicles Act, the Tribunal held that the claimants need not prove the negligence on the part of the vehicle. In any event, it was observed by the Tribunal that the accident had occurred only due to the rash and negligent driving of the mini lorry by its driver and FIR was registered against him. The Tribunal also held that the deceased travelled in the mini lorry as an unauthorized passenger and hence, the insurance company shall pay the compensation amount first and then recover the same from the first respondent.

5. The compensation payable to the claimants was quantified at Rs.1,82,000/-. Not satisfied with the quantum of compensation, the claimants have filed the present appeal.



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6. The second respondent insurance company has not filed any appeal, challenging the said award.

7. The learned counsel for the appellant would submit that the notional income of the deceased fixed by the Tribunal at Rs.3,000/- was very much on lower side and hence, the same requires enhancement.

8. The second respondent/ insurer of the mini lorry would submit that the accident had occurred in the year 2002 and therefore, the amount of Rs.3,000/- fixed by the Tribunal as notional income of the deceased is fair and reasonable one.

9. In the claim petition, it was stated by the claimants that the deceased was a mason and was earning a sum of Rs.4,500/- per month. However, in order to prove the income and avocation, the claimants have not produced any documentary evidence. The accident had occurred on 14.01.2002. Taking into consideration the date of accident and the prevailing cost of living, a sum of Rs.3,000/- fixed by the



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Tribunal as notional income appears to be reasonable and the said finding requires no interference by this court.

10. As per Ex.P2, postmortem certificate, the Tribunal fixed the age of the deceased as 65 years and adopted applicable multiplier '7' and quantified the compensation payable to the claimants under the head loss of dependency at Rs.1,68,000/- and hence, the said compensation need not be enhanced.

11. The Tribunal also awarded a sum of Rs.10,000/- towards loss of love and affection and a sum of Rs.4,000/- towards transportation charges and funeral expenses. The compensation awarded under the above said conventional heads also appear to be reasonable. In all, a sum of Rs.1,82,000/- was awarded by the Tribunal as compensation to the claimants. Therefore, I do not find anything to interfere with the award passed by the Tribunal.

12. Accordingly, this civil miscellaneous appeal is dismissed and the award passed by the Tribunal is affirmed.



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13. The appellants/claimants are entitled to get the compensation as awarded by the Tribunal, along with interest from the date of claim petition till the date of realization. *The order of this court in CMP No.8966 of 2022, dated 23.06.2022, will not affect the right of the appellant to claim interest in respect of award amount fixed by the Tribunal, since there is no enhancement of quantum in appeal.*

14. The **second respondent** is directed to deposit the compensation amount as awarded by the Tribunal to the credit of MCOP No.1234 of 2002 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Krishnagiri, along with interest and costs, less the amount already deposited, if any, within a period of **four weeks** from the date of receipt of a copy of this judgment.

15. On such deposit being made, the claimants shall be permitted to withdraw their respective shares, along with interest and costs, less the amount if any, already withdrawn, as per the apportionment made by the Tribunal, by making formal application before the Tribunal.



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There shall be no order as to costs.

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Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
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To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTCHAR, J.

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