



C.M.A(MD)No.763 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and

THE HONOURABLE MS.JUSTICE R. POORNIMA

C.M.A(MD)No.763 of 2022

and

C.M.P(MD)No.6737 of 2022

The Branch Manager,
Oriental Insurance Company Limited,
KTM Kasim Centre,
477/4G, II Floor,
36, Salai Street,
Ramanathapuram District.

... Appellant /
2nd Respondent

Vs.

1.Fazil Iffiya

2.Minor Judo Harith

3.Minor Frankline Jenkins
*(Minors 2nd and 3rd respondents are
represented through their mother and
guardian of 1st respondent Fazil Iffiya)*

4.Francisco

5.Xavier Ammal

...Respondents 1 to 5 /
Petitioners 1 to 5



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6.A.Arockiya Dass

... 6th Respondent /
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motors Vehicle Act, 1988 to set aside the order made in MCOP.No.101 of 2019 dated 22.09.2020 on the file of the Motor Accidents Claims Tribunal cum Principal District Judge, Ramanathapuram.

For Petitioner : Mr.C.Jawahar Ravindran

For Respondents : Mr.S.A.Ajmal Khan
for R.1 to R.5

ORDER

Heard both sides.

2.The Insurance Company has preferred this appeal. One Antony Ditto was travelling in a four wheeler near ECR road, Thondi on 11.12.2018 at around 07.00 p.m. A two wheeler coming from the opposite direction suddenly took a turn and virtually came in front of the car. In order to avoid collision, the driver of the car applied sudden break and as a result, the car capsized. The appellant is the insurer of the four wheeler. Antony Ditto died in the accident. Crime No.26 of 2018 was registered on the file of Thirupunavasal Police



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Station against the car driver. Antony Ditto who suffered injury was rushed to Government Hospital, Ramnad. He succumbed to the injuries and died on the same date. His wife and children filed MCOP.No.101 of 2019 on the file of MACT, Ramanathapuram. The Insurance Company filed their statement of objections opposing the claim. The claimant examined herself as PW1. Ex.P1 to Ex.P9 were marked. One of the co-passenger was examined as PW2 and two other witnesses. Ex.C1 and Ex.C2 were marked through Court witnesses. After considering the evidence on record, the trial Court passed an award for a sum of Rs.77,56,000/- with interest. Aggrieved by the same, the Insurance Company filed this appeal.

3.The learned Standing Counsel appearing for the Insurance Company reiterated all the contentions set out in the memorandum of grounds of appeal. His primary argument was on the consideration of the latest I.T return filed by the deceased. The deceased had filed IT returns for the years 2015, 2016 and 2017. He did not file any IT return for the year 2017-18. He filed IT return only for the year 2018-19. The counsel's contention was that the Court below ought to have taken the average of the income reflected in the aforesaid returns and that the Tribunal erred in taking the final year return for the purpose of determining the compensation. He called upon this Court to suitably modifying the impugned award.



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4.Per contra, the learned counsel appearing for the claimant submitted

that the impugned award does not warrant interference.

5.We carefully considered the rival contentions and went through the evidence on record. The deceased got an annual income of Rs.3,16,550/- for the year 2015-16, Rs.3,34,903/- for the year 2016-17 and Rs.5,07,456/- for the year 2018-19. The occurrence had taken place on 11.12.2018. IT return which was marked as Ex.P9 was filed on 18.09.2018.

6.The Hon'ble Supreme Court in the decision reported in **2020 (1) TN MAC 216 (SC) (Malarvizhi & Others Vs United India Insurance Company Limited & Another)** had held that the determination of income must proceed on the basis of the IT return where available. The IT return is the Statutory document on which the reliance may be placed to determine the annual income of the deceased. In the very nature of things, the latest IT return has to be taken as the basis for determining the annual income of the deceased.

7.The Court below had applied the correct principles of law relating to determination of compensation. The impugned award does not call for interference.



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8.This Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [R.P., J.]
27.01.2025

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

To

Motor Accidents Claims Tribunal cum
Principal District Judge,
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