

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.3832 of 2011

and

M.P. No. 1 of 2011

The National Insurance Co. Ltd.,
1152/ 1153, Trichy Road
Chintamani, Ramanathapuram (Anjal)
Coimbatore District. ..Appellant/Respondent No.2

Vs.

1. S.G. Loganathan
S/o. Gopal ..Respondent No.1/Petitioner No.1
2. Mrs. Tamilselvi
W/o. S.G. Loganathan ..Respondent NO.2/Petitioner NO.2
3. Mr. Swarimuthu
S/o. Anthonysamy ..Respondent No3/Respondent No.1
4. M/s. Bharath Autos
218/A9, Trichy Road
Palladam. ..Respondent No.4/Respondent No.3
5. IFFCO TOKIO General Insurance Co.Ltd.,
Tulasi Chambers, 3rd Floor,
195, T.V. Swamy Road (W)
R.S. Puram,
Coimbatore. ..Respondent No5./Respondent No.4

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 26.08.2011 made in M.C.O.P No.1050 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal Sub Ordinate Judge, Tirupur.

For Appellant : Mr. G. Udyasankar

For Respondents: Mr. N. Vijayaraghavan for R5
R1 to R4 - No Appearance

J U D G M E N T

The Insurance Company has come up with this appeal challenging the liability and quantum of compensation awarded by the Tribunal.

2. On 15.10.2008, when the deceased Sabari Anand was travelling in a new motor cycle (unregistered), near Ezhil Nithi Mills, at Karukkampalayam, another two wheeler driven by the 3rd respondent herein, insured with the appellant Insurance Company, bearing Registration No. TN 37 AV 4647, driven in a rash and negligent manner, dashed against the motor cycle. Due to the accident, the deceased sustained grievous fatal injuries and died in the hospital on the next day. The Claim Petition has been filed by his father and mother, before the Tribunal, seeking a sum of Rs.10,00,000/- as compensation. After analyzing the available oral and documentary evidences, the Tribunal awarded a sum of Rs.4,09,000/- as compensation, under the following heads:

Sl. No	Heads	Amount
1	Loss of dependency	Rs.3,84,000.00
2	Love and Affection	Rs. 20,000.00
3	Funeral Expenses	Rs. 5,000.00
	Total	Rs.4,09,000.00

3. Learned counsel appearing for the appellant/ Insurance Company, mainly contended that the Tribunal has wrongly held that the appellant along with the other respondents therein, has to pay the compensation, while the two wheeler insured with them is not responsible for the accident. The deceased, who was riding an un-registered motor cycle, is responsible for his death and so the Tribunal ought to have exonerated the liability of the appellant Insurance Company. He further submitted that one Mrs. Morcha Mary, the pillion rider/wife of the 3rd respondent herein, filed MCOP No.408/2008 against the 4th and 5th respondents herein and the Tribunal granted a compensation of Rs.10,000/- for the injuries sustained by her. Learned counsel also contended that the Tribunal has granted a huge amount as compensation, in the absence of any documentary evidence. Without following the guidelines laid down in Sarala Verma's case, reported in 2009 (2) TNMAC 1, the Tribunal has erred in deducting 1/3rd towards his personal expenses, while the proper deduction would be 50%, as the deceased was a bachelor at the time of accident. Challenging the award on the above grounds, this appeal has been filed.

4. Per contra, learned counsel for the respondents/claimants would submit that based on the judgment of the Apex Court in Syed Sadiq vs. Deputy Manager, United

Insurance Co. Ltd., reported in 2014 (1) TNMAC 459, even in the absence of proof of income, the monthly income of the deceased should have been fixed at Rs.6,500/-. He further contended that as held in Rajesh's case reported in 2013(2) TNMAC 55, the Tribunal ought to have granted 50% of the income of the deceased towards future prospects, since the deceased was 19 years old at the time of accident, but no amount has been granted under the said heading.

5. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. After investigation of the witnesses, the Tribunal has come to the conclusion that the two wheeler, driven by the 3rd respondent herein, is responsible for the fatal accident and not the deceased. A perusal of the award and records would show that the Tribunal was right in directing the respondents therein, to jointly or severally pay the compensation to the claimants. The Tribunal has rightly granted the award by following the guidelines issued by this Court and the Apex Court and hence it needs no interference and the same is confirmed.

7. In fine, the Civil Miscellaneous Appeal is dismissed, confirming the quantum of compensation and the rate of interest at 7.5% per annum awarded by the Tribunal. The appellant/Insurance Company and the other respondents are directed to deposit the entire award amount, together with accrued interest, less the amount already deposited, to the credit of M.C.O.P.No.1050 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal Sub Ordinate Court, Tiruppur, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall pay compensation to the claimants, in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company. No costs. Consequently, the M.P. is closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To :

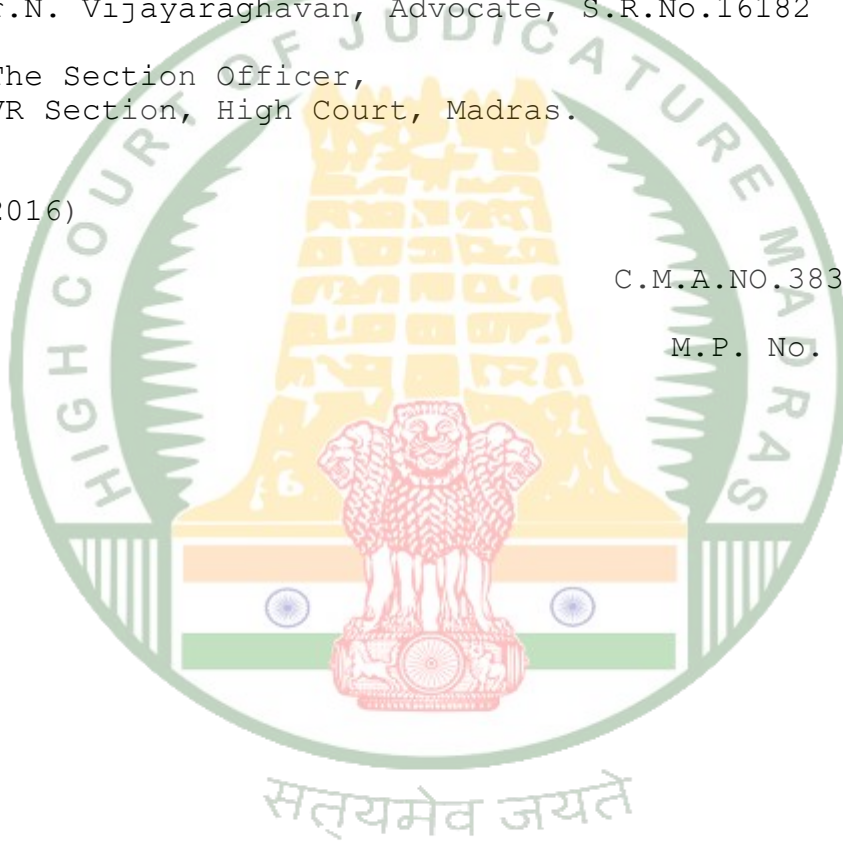
The Principal Sub Ordinate Court,
Motor Accidents Claims Tribunal,
Tiruppur.

+1cc to Mr. M. Udayasankar, Advocate, S.R.No.15639
+1cc to Mr.N. Vijayaraghavan, Advocate, S.R.No.16182

Copy to: The Section Officer,
VR Section, High Court, Madras.

NRJK(CO)
EU(28/06/2016)

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