



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.868 of 2016
and
C.M.P. (MD) No.8056 of 2016

National Insurance Company Limited,
Bodinaickanur Town,
Theni District,
through its Branch Manager. .. Appellant/Respondent No.2

Vs.

1.Lakshmi
2.Minor Hari Prabha
3.Minor Shiyam
4.Ramar @ Raman
5.Annamayil ... Respondents 1 to 5/Petitioner
6.S.Kannammal ... VI Respondents/Respondent No.1

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree passed by the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Theni, made in M.C.O.P.No.219 of 2005, dated 14.03.2007.

For Appellant : Mr.D.Sivaraman

JUDGMENT

Challenging the award passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Theni, in M.C.O.P.No.219 of 2005, dated 14.03.2007, the appellant Insurance Company has preferred this appeal.

2.The legal heirs of the deceased Prabhakaran, who died in a motor vehicle accident occurred on 27.03.2005, filed a claim petition seeking compensation of Rs.7 lakhs alleging that on 27.03.2005, when the deceased was returning from the workshop after his work in his TVS Suzuki bearing Regn.No.TN-60-3327 from Theni, a Mahindra Van bearing Regn.No.TN-57-C-4903 came from the opposite direction in a rash and negligent manner, dashed against the motorcycle. In the impact, the deceased sustained grievous injuries and he died on the way to hospital. A criminal case was registered against the driver of the van in Crime No.95 of 2005 by Allinagaram



Police under Section 304-A of IPC.

3. The appellant resisted the claim petition by filing a counter disputing the manner of accident and their liability. The appellant has also disputed the age, occupation and income of the claimant.

4. Before the Tribunal, the claimants examined PW2, one Rajangam, who is an eyewitness to the accident and he deposed that the driver of the van came in a high speed and dashed against the motorcycle. The claimants have produced Ex.P1, the First Information Report, Ex.P2, postmortem certificate and Ex.P.12, copy of the judgment passed in C.C.No.630 of 2005, by the learned Judicial Magistrate, which would reveal that the driver of the van was convicted in the criminal case.

5. The Tribunal based on the evidence rightly came to the conclusion that the driver of the van caused the accident and awarded compensation. Aggrieved by the judgment and decree, the present appeal is filed.

6. Heard Mr.D.Sivaraman learned counsel appearing for the appellant and perused the records.

7. The claimants have produced Ex.P9 to show that they are the legal heirs of the deceased, Prabhakaran. To prove their case, the first claimant examined herself as PW1 and deposed that the deceased was having a workshop and earning Rs.6,000/- per month. Ex.P3 is the experience certificate issued by the Hero Honda Company. Ex.P5 is the Transfer Certificate issued by the Karaikudi Alagappa Polytechnic. Ex.P4 is the driving licence and Ex.P7 is the School Transfer Certificate. Based on Ex.P4 and Ex.P7, the Tribunal fixed the age of the deceased at 29 years and assessed the monthly income at Rs.4,500/- and after deducting 1/3rd for his personal expenses, calculated loss of dependency as Rs.6,48,000/- by applying multiplier of 18.

8. In addition to that, the Tribunal has awarded Rs.2000/- towards funeral expenses and Rs.10,000/- for the first claimant towards loss of consortium. The Tribunal has totally awarded a sum of Rs.6,60,000/- along with interest at the rate of 7.5 % per annum.

9. In my considered opinion, the award of the Tribunal made in M.C.O.P.No.219 of 2005, dated 14.03.2007, is fair and reasonable. Therefore, the same is confirmed.

10. **In fine**, this Civil Miscellaneous Appeal is dismissed. In view of the dismissal of the appeal, the appellant is directed to deposit the entire award amount, less the amount, if any already deposited, along with accrued interest and costs to the credit of M.C.O.P.No.219 of 2005, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Theni, within a period of

twelve weeks from the date of receipt of the copy of this Judgment.

11. On such deposit being made, the major claimants are permitted to withdraw their share amount along with accrued interest and costs, without filing any formal petition. The share of the minor claimants shall deposit in any one of the nationalised Bank in fixed deposit and the minors shall withdraw their share amount on their attaining majority. Till such time, the first claimant, being the guardian of the minor claimants 2 and 3, is permitted to withdraw the accrued interest from the said deposit, once in three months directly from the Bank and utilize the same for the welfare of the minor claimants. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Theni.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 47208

PJL

TE/GSV-PM : 16/11/2016 : 3P/4C

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