

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.01.2017

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

C.M.A.No.248 of 2014
and M.P.No.1 of 2014

M/s.National Insurance Co. Ltd.,
having Branch Office at
IInd Floor, 371-A,
Prestige Shopping Arcade,
Ramasamy Circle,
Mysore, Karnataka - State. Appellant

Vs.

1.Chellappa Gounder
2.Meenathal
3.Vasantha ... Respondents

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.07.2013 made in M.C.O.P.No.633 of 2009 on the file of the Motor Accident Claims Tribunal, [Subordinate Judge], Dharapuram.

For Appellant : Mr.J.Chandran

For Respondents: Mr.Ma.Pa.Thangavel [for R1 & R2]
R3-Experte before tribunal.

J U D G M E N T

Appeal preferred by the Insurance Company, challenging the liability to pay compensation awarded in M.C.O.P.No.633 of 2009 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Dharapuram, on the ground that negligence on the part of the driver or on the owner of the vehicle, has not been established.

2.It is the specific case of the Insurance Company that the accident took place, only on account of the negligent act of the deceased and therefore, the tort of negligence has not been established as against the owner. It is also pointed out that even though FIR was registered against the driver of the offending vehicle, later on, it has been referred as mistake of fact and therefore, the Insurance Company is not liable.

3. Whether these contentions are acceptable, is the issue to be considered ?

4. The Tribunal has relied upon the evidence of P.W.2- Jayakumar, who is the eyewitness to the occurrence, who has stated in his evidence that it is only the Indica car, which was driven by its driver in a rash and negligent manner, had hit against the deceased Subramani. The Insurance Company has examined one S.Venkatesan, Sub Inspector of Police, who referred the case as mistake of fact, after investigation. In that case, the Insurance Company has to examine the witness, who has spoken about the manner in which, the accident taken place. That has not been done.

5. Non examination of an independent witness to speak about the manner of accident, is a vital failure on the part of the owner and the insurance company. The Tribunal had analysed all the aspects and come to a correct conclusion. Under these circumstances, the contention that it was the only deceased, who was negligent is not acceptable and there is no merits in the appeal and therefore, this appeal is dismissed, so far as the contention regarding the negligence is concerned.

6. So far as quantum of compensation is concerned, the following is the breakup details of the award :

i. Loss of income [2000X12X15]	Rs.3,60,000/-
ii. Funeral expenses	Rs. 5,000/-
iii. Transport expenses	Rs. 3,000/-
iv. Love and affection	Rs. 30,000/-
Total	Rs.3,98,000/-

7. Considering the age as 36, adopting the multiplier of 15, taking the income as Rs.4,000/- and deducting 50% towards personal expenses, the loss of dependency has been quantified by the Tribunal. The accident is of the year 2008. The award under loss of love and affection, transport expenses and cremation expenses are low and therefore, it cannot be interfered with. The loss of dependency is assessed fixing the monthly income at a lower level. In fact, the future prospective increase in income has not been considered. Therefore, the award cannot be interfered with. In the result, the appeal is dismissed.

8. The Appellant/Insurance company is directed to deposit the entire award amount along with interest and costs as awarded by the claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank accounts of the claimants through RTGS

within a period of two weeks, as apportioned by the claims Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gva

To

1.The Subordinate Judge,
The Motor Accident Claims Tribunal,
Dharapuram.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.No.1538

C.M.A.No.248 of 2014
and
M.P.No.1 of 2014

KJI(CO)
sm:7.12.2017



WEB COPY