



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**

WEB COPY

C.M.A(MD) No.25 of 2017
and
C.M.P(MD) No.260 of 2017

National Insurance Company Limited,
Rep. By its Branch Manager,
Thoothukudi.

... Appellant/Respondent No.2

vs.

1.Sundaram
2.Muthu
3.Nagaraj
4.Lakshmi
5.Paramasivam
6.Rajesh

...Respondents 1 to 5/Petitioners 1 to 5
...Respondent No.6/Respondent No.1

Prayer: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No.136 of 2012, dated 11.04.2014 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Theni.

For Appellants :Mr.D.Sivaraman

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 11.04.2014, made in M.C.O.P.No.136 of 2012, passed by the Motor Accident Claims Tribunal-cum-Principal District Court, Theni.

2.The appellant is the second respondent, respondents 1 to 5 are the claimants and the sixth respondent is the first respondent in in MCOP.No.136 of 2012. The respondents 1 to 5/claimants filed the claim petition in MCOP.No.136 of 2012 claiming a sum of Rs.6,00,000/- as compensation for the death of son of the first respondent and brother of respondents 2 to 5. The 6th respondent/1st respondent is the owner of the vehicle.

3.Facts of the case:-

According to the respondents 1 to 5, on 29.04.2010 at 9.15 pm, when the deceased was walking on the road, a container lorry bearing Registration No.TN-69-L-2799 belonging to the sixth respondent was driven in a rash and negligent manner and dashed against the deceased and due to the said accident, he died on the spot. According to the respondents 1 to 5 the deceased was 45 years at the time of accident and was working as Master in weaving unit and was



earning Rs.6000/- to Rs.7000/- per month. The respondents 1 to 5 are the dependants. Therefore, they filed claim petition against the appellant and the sixth respondent.

4.The appellant and the sixth respondent filed separate counter and opposed the said claim petition. According to them, the deceased suddenly crossed the road and due to his negligence only, the accident was occurred. The appellant also contented that vehicle belonging to the sixth respondent was not involved in the accident.

5.Before the Tribunal, the first respondent examined herself as P.W.1 and eye witness Mr.Ramamoorthy was examined as P.W.2 and marked 8 documents as Exs.P.1 to P.8. On behalf of the sixth respondent, three witnesses were examined as R.W.1 to R.W.3 and did not mark any documents. The appellant did not let in any oral and documentary evidence.

6.The Tribunal, considering the pleadings, oral and documentary evidence, Ex.P1-FIR, evidence of P.W.2-eye witness, came to the conclusion that the accident took place only due to rash and negligent driving of the driver of the Container Lorry belonging to sixth respondent. Considering the age and the nature of work done by the deceased before his death, the Tribunal awarded a sum of Rs.4,45,000/- (Rupees Fourth Lakhs Fortyfive Thousand only) as compensation.

7.Aggrieved against the said compensation, the Insurance Company has filed this present Civil Miscellaneous Appeal.

8.The learned Counsel for the appellant contented that due to the negligence of the deceased only the accident occurred. The evidence of P.W.2-eye witness is contrary to Ex.P.1-FIR. This contention is untenable. The Tribunal has considered all the materials of record and held that the accident occurred only due to the rash and negligent driving of the driver of the sixth respondent. The sixth respondent and appellant have not let in any contra evidence to prove this claim that due to the negligence of the deceased only the accident occurred. The Tribunal has considered the Ex.P1-FIR and deposition of eye witness-P.W.2 before the tribunal and accepted his evidence. The appellant has not substantiated his case that there is a contradiction between the FIR-Ex.P1 and evidence of P.W.2-eye witness before the Tribunal. The Tribunal has applied multiplier of 14. The respondents 1 to 5 have not produced any documents to show the income of the deceased and considering the fact that the deceased was a bachelor, deducted 50% of the personal income and fixed at Rs.2,500/- to the income of the deceased and applied multiplier of 13 as per **Sarla Verma v. Delhi Transport Corporation**, reported in **2009(2) TN MAC 1 (SC)** and awarded a compensation of Rs.3,90,000/- for loss of income and awarded a sum of Rs.10,000/- for loss of love and affection and Rs.5,000/- for funeral expenses and awarded a total sum of Rs.4,45,000/- as compensation.



9.The compensation awarded by the Tribunal is just compensation and there is no circumstances warranting to set aside the award of the Tribunal.

10.In the result, the Civil Miscellaneous Appeal is dismissed,confirming the judgment and decree passed in M.C.O.P.No.136 of 2012, by the Motor Accidents Claims Tribunal-Principal District Court,Theni. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub-Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Principal District Court, Theni.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC TO MR. D.SIVARAMAN,ADVOCATE,SR NO.14819

mrn/am

MAS/MR:04.04.2017:3P-4C

C.M.A(MD) No.25 of 2017
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