



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2017

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) .No.497 of 2016
and
C.M.P. (MD) No.5638 of 2017

1.Kanniammal
2.Alagammal

... Appellants/Petitioners

Vs.

1. V.K.Moorthy
2. The Branch Manager,
New India Assurance Company Ltd.,
Gopi.

... Respondents/Respondents

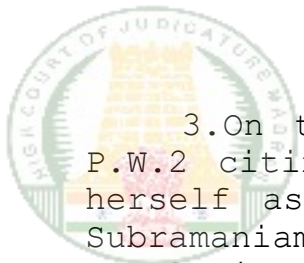
Prayer:- Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order made in M.C.O.P.No.500 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Dindigul, dated 27.04.2016.

For Appellants	: Mr.G.Vellaichamy
For R1	: No appearance
For R2	: Mrs.P.Malini

JUDGMENT

Heard the learned counsel on either side.

2.The claimants have filed this appeal questioning the dismissal of their claim petition by the Tribunal. One Velmurugan, husband of the first claimant and son of the second claimant was riding a two-wheeler in Sirumugai Akkarai Sengappalli Road on 17.03.2014 at about 08.30 p.m, when the Eicher Van bearing registration No.TN 41/Z7488 belonging to the first respondent and insured with the second respondent herein, was involved in a collision. In the resulting accident, the said Velmurugan died. FIR was registered on the next day by the brother of the deceased. The claimants filed M.C.O.P.No.500 of 2014, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Dindigul,, seeking compensation.



3. On the side of the claimants, one Vellaichamy, examined as P.W.2 citing him as an eye witness. The first claimant examined herself as P.W.1. On the side of the respondents, the driver Subramaniam, was examined as R.W.1. The Tribunal came to the conclusion that there was nothing on record to show that the accident happened on account of the rash and negligent driving of the vehicle belonging to the first respondent. Therefore, the claim petition was dismissed. Aggrieved by the same, this appeal has been filed.

4. I went through the copy of the rough sketch marked as Ex.R.2. The Eicher van was being driven by R.W.1 in Sirumugai Akkarai Sengappalli Road from west to east. It is their case that the deceased riding his two wheeler came from the branch road from north to south and took a sudden turn on the west. The van driver would claim that he was not at fault. If, really, the van driver was not at fault, he would have certainly lodged information with the nearest police station immediately. But the driver did not lodge an FIR. This goes to show that his conduct was not free from blame. Since, it is a case of collision involving two vehicles on a main road it would be safe to apportion the negligence equally between the two persons. The evidence of P.W.2 examined by the claimants does not inspire my confidence. He appears to be a set up witness. Therefore, on a reading of the deposition of R.W.1, read with a contents of Ex.R.2, rough sketch and the fact that R.W.1 did not go to the police station at all, I am of the view that the interest of justice will be served by fixing contributory negligence at 50% on the van driver. I therefore hold that the claim petition filed by the appellants is maintainable.

5. Coming to quantum, it can be seen that the deceased was aged about 32 years. There was no income proof. Therefore his income can be taken as Rs.6,000/-. Adding future prospects at 40%, the monthly income will be at Rs.8,400/-. Therefore, the pecuniary loss for the family will be Rs.10,75,200/- (Rs.5600/- X12X16=Rs.10,75,200/-). Further a sum of Rs.70,000/- can be awarded towards damages under the conventional heads. The total sum is Rs.11,45,200/-. Since the deceased has been fastened with 50% negligence, the compensation payable to the claimants will be Rs.5,72,600/-.

6. The award dated 27.04.2016 made in M.C.O.P.No.500 of 2014 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Dindigul, is set aside accordingly.

7. The second respondent is directed to deposit the compensation amount of Rs.5,72,600/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are entitled to withdraw the same, by filing proper application before the Tribunal. The wife and mother of the deceased will be entitled



to the said amount in equal shares. The appellants/claimants are directed to pay the court fee for the award amount by this Court.

8. This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Principal District Court,
Motor Accident Claims Tribunal,
Dindigul.

Copy To:-

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 2 CC TO Mr.G.VELLAICHAMY, ADVOCATE IN SR No. 91381 & 91407
+ 1 CC TO M/s.P.MALINI, ADVOCATE IN SR No. 91159

TSG/IS
TE/JC/SAR-3 : 19/06/2018 : 3P/7C

C.M.A. (MD) .No.497 of 2016
06.12.2017