



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.642 of 2011
and
M.P.(MD)No.1 of 2011

National Insurance Company Ltd.,
Branch Office,
Rasi Plaza Complex Upstairs,
63, West Pradhakshinam Road,
Karur.

... Appellant/Respondent No.2

Vs.

1.Kanimozhi
2.Minor Iniya
3.Minor Dharunikka
(Minors 2 and 3 represented through their
mother and next friend, 1st respondent,
Kanimozhi)

4.Devaraj @ Vamundi

5.Muniyammal

... Respondents 1 to 5/
Petitioners 1 to 5

6.R.Palanisamy

... Respondent No.6/
Respondent No.1

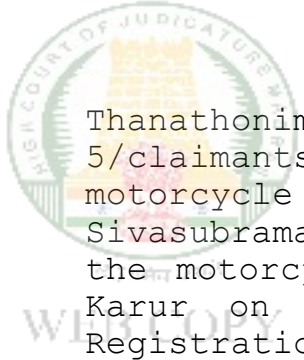
PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (District Judge, Karur) in M.C.O.P.No.530 of 2006, dated 17.06.2010.

For Appellant : Mr.M.Murugesan
For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/National Insurance Company against the award of the Motor Accident Claims Tribunal (District Judge), Karur, passed in M.C.O.P.No.530 of 2006, dated 17.06.2010.

2. It is a case of fatal accident took place on 05.01.2006 at about 11.30 hours at Karur to Dindigul Road in front of the



Thanathonimalai E.B. Office. It is the case of the respondents 1 to 5/claimants 1 to 5 that the deceased Manoharan rode Yamaha motorcycle bearing Registration No.T.N.47-D-4727 and one Sivasubramanian travelled along with him as a pillion rider. When the motorcycle came near the superintendent of the police office, Karur on Karur-Dindigul road, the Tractor and Tractor bearing Registration No.47-H-7049 and T.N.47-H-7050, which was insured with the appellant/Insurance Company, came from north to south in a rash and negligent manner and dashed against the Yamaha motorcycle and as a result of which, the Manoharan and Sivasubramanian thrown out and sustained fatal injuries.

3. The claimants filed an application in in M.C.O.P.No.530 of 2006 on the file of the Motor Accident Claims Tribunal/(District Judge), Karur, seeking compensation.

4.Before the Tribunal, the respondents 1 to 5/Claimants 1 to 5 examined three witness as P.Ws.1 to 3 and marked sixteen documents as Exs.P1 to P16. Exs.X1 to X3 were marked as Court's documents. The appellant/Insurance Company did not let in any oral or documentary evidence before the Tribunal.

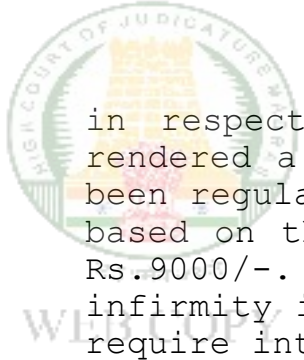
5.The Tribunal after considering the pleadings, oral and documentary evidences and the arguments advanced on either side and also appreciating the evidences on record, fixed 30% of liability on the rider of the motorcycle and 70% of liability on the driver of the Tractor and Tractor and awarded a sum of Rs.8,16,000/- as total compensation.

6.Against which, the appellant/Insurance Company has filed this present appeal challenging the liability as well as quantum of compensation awarded by the Tribunal.

7.The learned counsel appearing for the appellant/Transport Corporation contended that the accident had taken place in the middle of the road and therefore, the rider of the motorcycle was also equally liable for the accident. But, the Tribunal has erroneously fixed 70% of liability on the part of the driver of the Tractor and Tractor. He further submitted that at the time of accident, the deceased was working on contract basis and was earning a sum of Rs.4000/- per month. But, the Tribunal has erroneously fixed the monthly income of the deceased as Rs.9000/- and therefore, the award passed by the Tribunal warrants interference by this Court.

8. Heard the learned counsel appearing for the appellant and perused the materials available on record.

9. A perusal of the award passed by the Tribunal clearly shows that the Tribunal has discussed in detail about the manner of accident and found that the negligence on the part of the driver of the Tractor and Tractor is more than the rider of the motorcycle and



in respect of monthly income of the deceased, the Tribunal had rendered a finding that if the deceased would have been regularised and he would have been paid Rs.9500/- per month and based on that finding, fixed the monthly income of the deceased as Rs.9000/-. Therefore, this Court is of the view that there is no infirmity in the award passed by the Tribunal and the same does not require interference at the hands of this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 17.06.2010 passed in M.C.O.P.No.530 of 2006 on the file of the Motor Accident Claims Tribunal, District Judge, Karur, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimants are permitted to withdraw their share as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The District Judge,
Motor Accident Claims Tribunal,
Karur.

Copy To:-

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.R.VIJAYAKUMAR, ADVOCATE IN SR No. 66528

+ 1 CC TO Mr.N.MURUGESAN, ADVOCATE IN SR No. 66062

PM

TE/KK/SAR-II : 31/07/2017 : 3P/5C