

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2643 of 2015
and M.P.No.1 of 2015

The Oriental Insurance Co. Ltd.,
Rep. By its Branch Manager,
Jambu Bhava Complex, Katpadi Road,
Vellore.

.. Appellant/2nd Respondent

Vs.

1.Kamalammal

2.T.Sekar

3.T.Arjunan

4.T.Parimala .. Respondents 1 to 4/Petitioner

5.Irfaz Shoe Company,

Rep. By its Managing Director,
Kilpauk Garden Road, Kilpauk,
Chennai.

.. Respondent No.5/1st Respondent

(R5 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 16.06.2015 made in M.C.O.P.No.34 of 2009, on the file of Sub Court, (Motor Accidents Claims Tribunal), Arni.

For Appellant : Mr.S.Manohar

For R1 to R4 : Mr.P.Satheeskumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 16.06.2015 made in M.C.O.P.No.34 of 2009, on the file of Sub Court, (Motor Accidents Claims Tribunal), Arni.

2.The appellant is the 2nd respondent in M.C.O.P.No.34 of 2009, on the file of Sub Court, (Motor Accidents Claims Tribunal), Arni. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.4,00,000/- for the death of one

Deivasigamani, husband of the 1st respondent and father of the respondents 2 to 4, who died in the accident that took place on 02.12.2007.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the car belonging to the 5th respondent and awarded a sum of Rs.4,39,000/- as compensation to the respondents 1 to 4 and directed the appellant and the 5th respondent jointly and severally to pay the same.

4.Aggrieved by the said award granted by the Tribunal, the appellant-Insurance Company has come out with the appeal.

5.The learned counsel appearing for the appellant contended that the deceased did not die due to the injuries sustained by him in the accident. The injuries sustained by the deceased are not grievous injuries and are not capable of causing death. The deceased was an aged person and he died due to the natural cause. At the time of accident, the deceased was under the influence of alcohol and he was responsible for the accident. Earlier, the deceased filed M.C.O.P.No.36 of 2008, claiming compensation for the injuries sustained by him and injuries mentioned in the said claim petition are only simple injuries. Suppressing the said claim petition, the respondents 1 to 4 have filed the present claim petition. Except interested evidence of respondents 1 to 4, they have not let in any independent witness to prove that the death of deceased was caused due to the accident. In any event, the amounts awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

6.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that they have examined P.W.4, an independent eye-witness who had deposed that the accident occurred only due to the rash and negligent driving by the driver of the vehicle belonging to the 5th respondent. The respondents 1 to 4 were not aware of M.C.O.P.No.36 of 2008 filed by the deceased. The respondents 1 to 4 proved that the deceased died within 7 days of the accident, due to the injuries sustained by him in the accident. After coming to know of M.C.O.P.No.36 of 2008 filed by the deceased, the respondents 1 to 4 did not press the same and the same was dismissed as not pressed. The evidence of R.W.1 and documents filed by the appellant clearly proves that the accident occurred only due to the rash and negligent driving by the driver of the vehicle belonging to the 5th respondent and FIR was registered only against the driver of the 5th respondent. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellant as well as the respondents 1 to 4 and perused the materials available on record.

8. From the materials available on record, it is seen that it is an admitted fact that the deceased sustained injuries in the accident that occurred on 02.12.2007. The FIR was registered against the driver of the car belonging to the 5th respondent. The deceased died on 11.12.2007, within 10 days of the accident. The contention of the learned counsel for the appellant that no postmortem was conducted on the deceased and the respondents 1 to 4 failed to prove that the death was due to the injuries sustained in the accident, is without merits. Admittedly, the deceased died within 10 days of the accident. Considering the proximity of the date of accident and date of death, the contention of the learned counsel for the respondents 1 to 4 that the deceased died due to the injuries sustained by him in the accident, is acceptable. Just because, no postmortem was conducted, it cannot be held that the deceased did not die due to the injuries sustained by him in the accident. The appellant has not substantiated the contention that the deceased was under the influence of alcohol and he was responsible for the accident. The appellant has not taken such a stand in the counter statement filed before the Tribunal. For the above reason, there is no error in the award of the Tribunal warranting interference by this Court.

9. As far as quantum of compensation is concerned, the Tribunal has granted compensation, considering the materials on record, which is just compensation and there is no perversity in the said order, warranting interference by this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.4,39,000/- awarded by the Tribunal to the respondents 1 to 4 as compensation is confirmed. The appellant-Insurance Company is directed to deposit the award amount with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.34 of 2009. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

The Subordinate Judge,
(Motor Accidents Claims Tribunal), Arni.

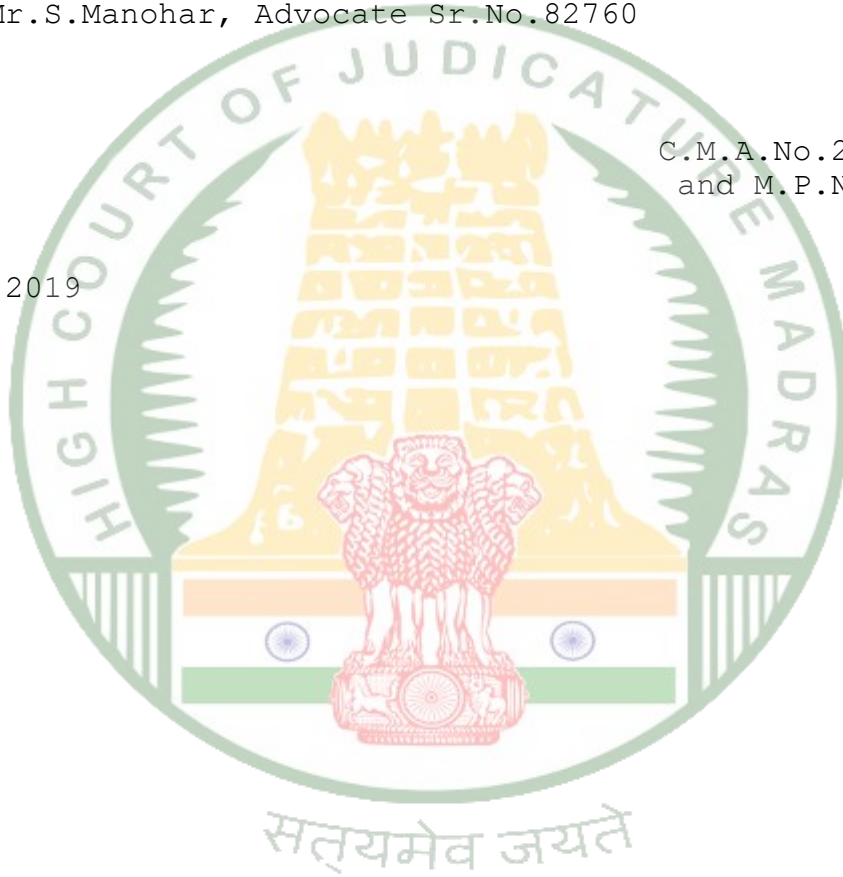
Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.P.Satheesh Kumar, Advocate Sr.No.82532

+1 cc to Mr.S.Manohar, Advocate Sr.No.82760

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and M.P.No.1 of 2015

SSV(CO)
CSL/14.03.2019



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