

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.111 of 2013

The Branch Manager,
National Insurance Company Limited,
No.18, Court Veedhi,
Tiruppur

... Appellant/2nd Respondent

...vs...

1.Muthulakshmi
2.Minor Ajithkumar
3.Minor Saravanan
4.M/s.Vishnu Elastic,
No.20-E, Venkateshapuram 5th Street,
Tiruppur

... Respondents/Petitioner

(R-4 set exparte in Lower
court)

... Respondent/1st Respondent

Prayer:

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 15.02.2012 made in MCOP.No.122 of 2011 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Tiruppur

For Appellant : Mrs.R.Sri Vidhya

For Respondent : Mr.S.S.Swaminathan R1 to R3

JUDGMENT

This civil miscellaneous appeal arises out of the Judgment and decree dated 15.02.2012 made in MCOP.No.122 of 2011 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Tiruppur.

2. For sake of convenience, the parties were herein after be referred to in this judgment as arrayed before the Tribunal.

3. According to the petitioners, on 01.01.2011 at about 7.50 p.m., when the deceased Rajappan, who was proceeding from South to North in Thiruppur-Dharapuram Road, the van bearing Registration No.TN-39-Y-6842 belongs to the first respondent and insured with the second respondent came from behind at high speed and dashed against the deceased Rajappan, which resulted in his death. For the death of said Rajappan, his legal heirs filed the claim petition in M.C.O.P.No.122 of 2011 seeking compensation of Rs.15,00,000/-.

4. On the other hand, opposing the petition, the second respondent/Insurance company filed a counter stating that the age, income and other details of the deceased is to be established and also disputed the nature of the accident. Further, the 2nd respondent contended that the petitioners have to prove that they are dependent of the deceased. Hence, the second respondent sought for dismissal of the claim petition.

5. Before the Tribunal, the first petitioner examined herself as P.W.1 and also examined P.W.2 and P.W.3 and produced Ex.P1 to Ex.P4 to substantiate their claim. On the side of the respondent, neither documentary nor oral evidence was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle and directed the respondents to pay a sum of Rs.8,10,000/- as compensation. Aggrieved over the said findings of the Tribunal, the appellant/2nd respondent Insurance Company has filed the present appeal questioning the finding regarding the negligence as well as quantum of compensation.

7. The learned counsel for the appellant/Insurance company contended that no evidence is available to prove the occupation and income of the deceased. It is further contended that the monthly income of the deceased should have been fixed at Rs.4,500/- per month and multiplier 15 is to be adopted and deduction of only 1/3rd amount towards personal expenses of the deceased by the Tribunal is wrong. Hence, the second respondent/Insurance Company seeks to entertain the appeal and set aside the award passed by the Tribunal.

8. On the other hand, the learned counsel for the petitioners/claimants submitted that on the basis of the available oral and documentary evidence, the Tribunal rightly came to the conclusion that the accident occurred only due to the rash, negligent and careless driving of the vehicle owned by the first respondent and insured with the second respondent caused the accident and arrived at a just and appropriate

compensation under various heads. Hence, the petitioners/claimants pray for dismissal of this appeal.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. The main contention of the learned counsel for the second respondent/appellant is that the monthly income should have been fixed at Rs.4,500/- and the multiplier 15 should have been applied. Further, it is contended that the Tribunal has wrongly fixed the monthly income at Rs.4,500/- and the same is not proper. It is further contended that the monthly income fixed by the Tribunal is on the higher side and in the absence of any materials to prove the income of the deceased, the conclusion arrived at by the Tribunal is not fair and proper. Thus, the second respondent/appellant seeks to modify the award passed by the Tribunal.

11. The learned counsel for the petitioners/claimants contended that as per the ruling of the Hon'ble Apex Court in SYED SADIQ Vs. DIVISIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LTD., 2014(2) SCC 735, the monthly income of the vegetable vendor was fixed at Rs.6,500/-, in the absence of any definite materials about the income of the deceased and as such the conclusion of the Tribunal is proper and the same needs no interference. In such circumstances, this Court find no fault in the amount fixed by the Tribunal at Rs.6,000/- as monthly income of the deceased. Out of the said amount, the Tribunal deducted 1/3rd amount towards personal expenses of the deceased and as such the loss of income to the family of the deceased per month should be taken as Rs.4,000/-. Hence, this Court does not find any error in the Tribunal fixing the monthly of the deceased at Rs.6,000/- per month and loss of income to the family at Rs.4,000/- per month.

12. As far as the negligence is concerned, the Tribunal after considering the oral and documentary evidence available on record, correctly concluded that the driver of the van alone is responsible for the accident. Ex.P1 First Information Report is registered against the driver of the vehicle and the evidence of eye witness P.W.2 is clear cut and categorically stated about the vehicle of the first respondent coming at high speed in a rash and negligent manner will clearly establish the fact of negligence on the part of the first respondent's driver is responsible for the accident. In view of the above said findings, it is clear that the accident occurred only due to the rash and negligent driving of the driver of the vehicle owned by the first respondent. Thus, this Court is of the considered view that there is no error in the finding of the Tribunal in fixing the liability and arriving at quantum of compensation payable by the respondents. In the light of the above said discussion,

this Court is of the considered view that there is no infirmity or irregularity in the award passed by the Tribunal. Thus, the civil miscellaneous appeal deserves to be dismissed.

13. In the result, the Civil Miscellaneous Appeal is dismissed. The Fair and Decreetal order passed in M.C.O.P.No.122 of 2011, dated 15.02.2012 on the file of the Motor Accident Claims Tribunal/Principal Sub Judge, Tiruppur is confirmed. No costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

The Motor Accident Claims Tribunal/
Principal Sub Judge,
Tiruppur.

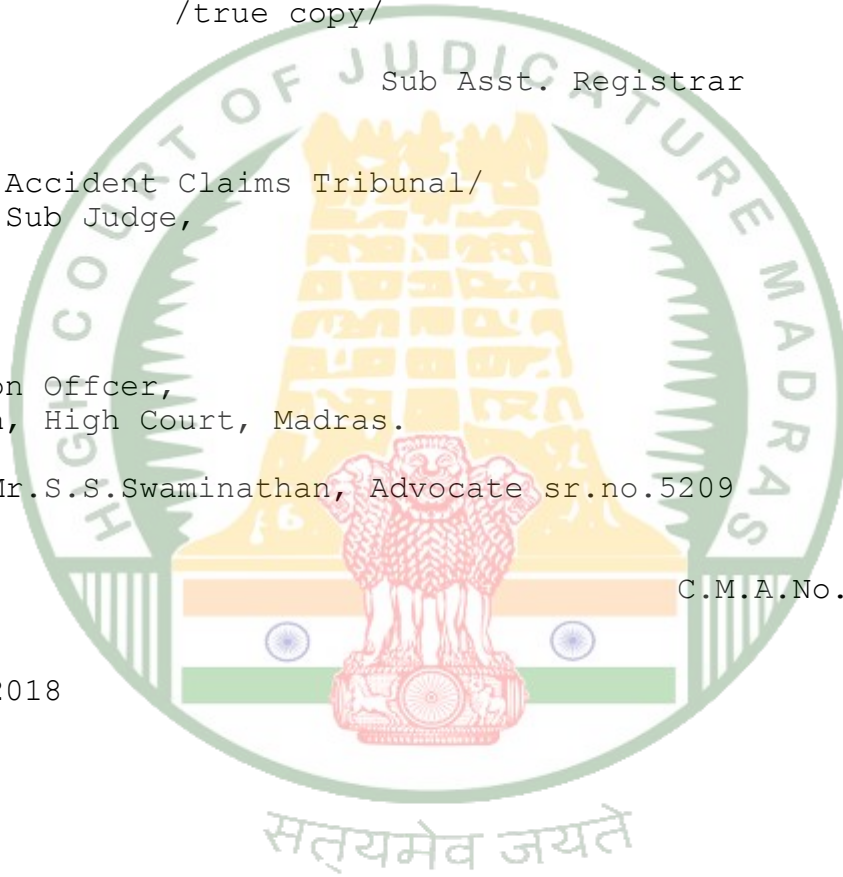
Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate sr.no.5209

C.M.A.No.111 of 2013

mr(co)
nr 23/02/2018



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