



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**
C.M.A(MD) No.1155 of 2015
and
M.P(MD) No.4 of 2015

National Insurance Company Limited,
Vigneswara Building,
Near over bridge,
7-Pudukkottai Road,
Trichy-20.

... Appellant/2nd Respondent

vs.

1.Sasikumar
2.Minor Sharmila
3.Minor Hamsavardhini

(Minors 2 & 3 respondents are represented
through their father and next friend,
the 1st respondent) ...1 to 3 Respondents/Petitioners

4.Louis
(Notice to R4 may be dispensed with since
he remained exparte before the Tribunal)
... 4th Respondent/ 1st Respondent

Prayer: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Claims Tribunal in M.C.O.P.No.1287 of 2013, dated 06.08.2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Tiruchirappalli and allow the appeal.

For Appellant :Mr.J.S.Murali
For R1 to R3 :Mr.N.Sudhagar Nagaraj

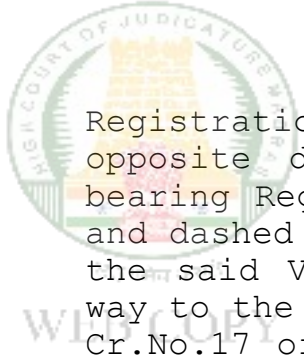
JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 06.08.2013, made in M.C.O.P.No.1287 of 2013, passed by the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

2.The appellant is the second respondent, the respondents 1 to 3 are the claimants and the fourth respondent, who is the owner of the vehicle, is the first respondent in the claim petition. The respondents 1 to 3 filed a claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Vennila, wife of the first respondent and mother of the respondents 2 & 3.

3.Facts of the case:-

According to the respondents 1 to 3, on 24.03.2006 at 06.00 p.m., while the first respondent was riding a motorcycle bearing



Registration No.TN-49-Q-9711, with one Vennila as a Pillion in the opposite direction, the fourth respondent came in a motorcycle bearing Registration No.TN-49-J-5906 in a rash and negligent manner and dashed against motorcycle of the first respondent. Due to which, the said Vennila sustained injuries and subsequently, died on the way to the hospital. The First Information Report was registered in Cr.No.17 of 2006. The deceased was working as a Teacher in Infant Jesus Primary School, Thuvakkudimalai and was earning a sum of Rs.8,000/- per month. The respondents 1 to 3 are the legal heirs and dependants of the deceased. The accident took place only due to rash and negligent riding by the fourth respondent and the appellant was the insurer of the motorcycle and hence, the fourth respondent and the appellant are liable to pay compensation.

4.The appellant filed counter statement and contended that the accident occurred only due to rash and negligent riding by the first respondent. The first respondent did not possess driving licence at the time of accident. Four persons were travelled in the motorcycle driven by the first respondent at the time of accident. Hence, the appellant is not liable to pay any compensation.

5.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the fourth respondent and held that the first respondent also contributed 10% of negligence and awarded a total sum of Rs.5,72,456/- as compensation, and after deducting 10% of contributory negligence, granted a sum of Rs.5,15,210/- to the respondents 1 to 3.

6.Aggrieved against the said award, the Insurance Company has filed this present Civil Miscellaneous Appeal.

7.I have heard the learned counsel appearing for the appellant and the respondents 1 to 3 and perused the materials available on record.

8.The contention of the learned counsel appearing for the appellant is that the fourth respondent was acquitted by the Criminal Court on merits, the first respondent did not have driving licence at the time of accident and the amount awarded is excessive. These contentions are without merits. It is well settled that the judgment of Criminal Court is not binding on the Civil Court or the Tribunal. The Tribunal can appreciate the evidence let in before the Tribunal and arrive at a conclusion with regard to the negligence independently. In the present case, the Tribunal appreciating the evidence of P.W.2 eye witness and Ex.P2 rough sketch concluded that the accident occurred only due to rash and negligent riding by the fourth respondent. The Tribunal considering the entire evidence on record, fixed 10% of contributory negligence on the part of the first respondent. The contention of the learned counsel for the appellant that the first respondent did not possess driving licence, is not relevant factor to decide the compensation



and liability of the appellant, as the accident occurred only due to the rash and negligent riding by the fourth respondent.

10.As far as quantum of compensation is concerned, the Tribunal has fixed the notional income of the deceased at Rs.2,643/-, after deducting 1/3rd towards her personal expenses and applying the multiplier '16', awarded a sum of Rs.5,07,456/- towards loss of income. The same is in order. As far as compensation under the conventional head is concerned, as per the judgment of the Hon'ble Supreme Court reported in **2017(2) TNMAC 609 (SC) [National Insurance Co.Ltd., vs. Pranay Sethi and others]**, the legal heirs of the deceased are entitled to get a sum of Rs.70,000/-. In the present case, the Tribunal has awarded only Rs.65,000/- under different heads, which is reasonable and the same is confirmed.

11.In the result, the Civil Miscellaneous Appeal is dismissed. The appellant Insurance Company is directed to deposit the award amount with interest and costs as directed by the Tribunal to the credit of M.C.O.P.No.1287 of 2013, on the file of the Motor Accidents Claims Tribunal, Special District Court, Tiruchirappalli, within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw their share as apportioned by the Tribunal with interest by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Motor Accidents Claims Tribunal,
Special District Court,
Tiruchirappalli.
2. The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.J.S.Murali, Advocate Sr.No.82864

AM

VB/PM/SAR1/20.12.2018/3P/5C

C.M.A(MD) No.1155 of 2015
06.09.2018