



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2018

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1227 of 2011

and

M.P.(MD)No.3 of 2011

M/s.National Insurance Co. Ltd.,
through its Branch Manager,
7/1, 1st Floor, Melarath Street,
Sivakasi.

... Appellant/2nd respondent

Vs.

1.Muthuthirulayee

2.Amutha Priya

... Respondents 1 & 2/Petitioners

(R2 declared as major and guardianship discharged
vide order dated 03.03.2015 made in MP(MD) No.1 of 2015)

3.Velmurugan

... 3rd Respondent/1st respondent

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.07.2009 passed in M.C.O.P.No.95 of 2008 on the file of the Motor Accident Claims Tribunal /Subordinate Court, Aruppukkottai.

For Appellant	:	Mrs.P.Malini
For R.1 & R.2	:	Mr.V.Sasikumar
For R.3	:	Dismissed

JUDGMENT

This civil miscellaneous appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal, Subordinate Court, Aruppukkottai, in M.C.O.P.No.95 of 2008 dated 02.07.2009.

2. Heard the learned Counsel appearing for the respective parties and perused the records carefully.

3. It is a case of fatal and the tribunal has awarded a sum of Rs.3,96,000/-, as compensation, to be paid by the appellant/insurance company. Aggrieved over the same, the



appellant/insurance company is before this Court.

4. Though several grounds are raised in the memorandum of grounds, the main grounds on which the appellant/insurance company has filed this appeal are on negligence and quantum.

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5. The learned Counsel for the appellant submitted that the tribunal was wrong in shifting the burden on the appellant to prove the age of the deceased when negative evidence cannot be proved and the tribunal ought to have held negligence on the part of the deceased for the accident and therefore, the appellant is not liable to pay compensation to the respondent.

6. On a perusal of the records, it is seen that the tribunal, at paragraph No.6 of the judgment, has elaborately discussed the ground of negligence and has categorically held that the driver of the 3rd respondent invited the accident and therefore, the same does not warrant any interference at the hands of this Court.

7. Insofar as the quantum is concerned, the learned Counsel for the appellant contended that the tribunal has erred in fixing the monthly income of the deceased as Rs.3,000/- and therefore, the same deserves interference.

8. It is an accepted fact that the claimants are dependants. Perusal of records shows that the accident occurred in the year 2008 and the deceased was doing fancy store business and earned Rs.4,000/- per month. The contention of the learned Counsel for the appellant that the tribunal was wrong in fixing the income of the deceased cannot be accepted, since the tribunal has fixed a reasonable sum of Rs.3,000/-, as monthly income. After considering the facts and circumstances, the tribunal, in the interest of justice, has awarded a decent sum, which, in my considered opinion is very reasonable and there is no infirmity in the order passed by the trial judge.

9. In view of the foregoing discussions, this civil miscellaneous appeal is liable to be dismissed and the same is accordingly dismissed. No costs. The award passed by the tribunal in M.C.O.P.No.95 of 2008 dated 02.07.2009 stands confirmed. The appellant is directed to deposit the entire compensation with interest @ 7.5%, within a period of eight weeks from the date of receipt of a copy of this order, if not deposited already. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Aruppukkottai.

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

+ 1 CC TO M/s.P.MALINI, ADVOCATE IN SR No. 64549

RM

TE/SV/SAR-3 : 30/05/2018 : 3P/5C

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