

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1107 of 2007

and

M.P.No. 1 of 2007

The National Insurance Co.Ltd.,
Branch office, 81-D, Chetty Street,
Opposite to Bus Stand,
Tiruchengode - 637 211.

... Appellant/3rd Respondent

Vs.

1. Minor Balagi
 - 2.Minor Sathiya Bama
 - 3.(Minors are Rep.by mother Jothi)
 3. Jothi
 4. Marakkal
 5. Lakshmana Gounder ..1 to 5 Respondents/ Petitioners
 6. P.Kalaiselvan ..6 respondent/1st respondent
 7. N.P.Velu ..7th Respondent/2nd respondent
- (R6 and R7 are set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.08.2006 made in M.A.C.T.O.P.No.301 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Bhavani.

For Appellant : Mrs.N.B.Surekha
For R1 to R4 : Mr.S.Kaithamalai Kumaran
For R6 : No appearance
For R5 : died

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J U D G M E N T

This appeal is filed against the order and decree dated 23.08.2006 passed by the Motor Accidents Claims Tribunal, Sub Court, Bhavani, in MCOP.No.301 of 2003.

2.The case in brief, is as follows:

On the fateful day, i.e., on 30.06.2002, at about 1.00pm, one Kasi @ Kasilingam and two others namely Devaraj and Selvakumar were travelling in a bore well lorry bearing Registration No.KA 01 C 1799 belonging to the seventh respondent and insured with the appellant insurance company. When they were proceeding near Oolavadi Venkatappa land, due to rash and negligent driving of the driver of the lorry, they contacted with electric wires and fell down from the vehicle and sustained grievous injuries. Despite treatment, the said Kasi @ Kasilingam died. Hence, his wife, children and parents being the surviving legal heirs, filed a claim petition seeking compensation of Rs.12,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.7,08,000/- with interest at the rate of 6% per annum from the date of petition. Challenging the same, the appellant Insurance Company has preferred this appeal.

3.The learned counsel for the appellant Insurance Company submitted that the deceased had also contributed to the accident by sitting on the top of the cabin of the rig lorry and came in contact with a live wire and was electrocuted. However, the Tribunal has erroneously fastened the entire liability on the appellant insurance company. The learned counsel further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the respondents/claimants submitted that the Tribunal, after considering the materials and evidence adduced by the parties, has awarded the just compensation and hence, the same does not call for any interference by this Court.

5.Heard both sides and perused the records.

6.According to the learned counsel for the appellant insurance company, the deceased had travelled in the lorry as gratuitous passenger at the time of accident and he himself contributed to the accident by sitting on the top of the cabin of the lorry and hence, the appellant insurance company is not liable to pay compensation. On a careful reading of Exs.P1 -FIR, P2-statement of the complainant and P3 rough sketch, it could be seen that on the date of accident, the deceased and two others were sitting on the top of the cabin of the bore well lorry and when the vehicle was proceeding on the Highway, they came into contact with the live wires and received burn injuries and out of three, two persons died. The Tribunal has also found that the deceased and others were sitting on the top of the lorry behind the driver's cabin. As such, the deceased was also responsible for the accident by travelling as gratuitous passenger. Hence,

this Court feels it just and appropriate to fix 10% contributory negligence on the deceased and accordingly, the finding of the Tribunal on negligence is modified.

7.As regards the quantum of compensation, P.W.1, wife of the deceased, deposed in her evidence that the deceased was aged 40 years; he was earning a sum of Rs.5,000/- per month by working as bore-well driller. However, no proof was produced to substantiate the same. Considering the oral and documentary evidence, the Tribunal has taken the monthly income of the deceased at Rs.4,000/- and adopted the multiplier of 15 and awarded a sum of Rs.5,31,000/- towards loss of income by following unit method. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and arrived at the said sum towards the contribution of the deceased to his family and hence, the same need not be interfered by this Court. That apart, the Tribunal has awarded Rs.30,000/- each towards loss of love and affection for the respondents 1,2,4 and 5, Rs.50,000/- towards loss of consortium to the wife, Rs.5,000/- towards funeral expenses and Rs.2,000/- towards transportation, which, in the opinion of this Court, appear to be fair, just and reasonable and hence, the same are hereby confirmed.

8. In such view of matter, the appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit a sum of Rs.6,37,200/- (90% of Rs.7,08,000/-) with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. It is reported by the learned counsel for the respondents/claimants that the minor respondents 1 and 2 have attained majority as of now and the fifth respondent died. In view of the same, the Tribunal shall transfer the award amount to the respective bank accounts of the respondents 1, 2, 3 and 4 and the legal heirs of the fifth respondent through RTGS, as per the ratio of apportionment made by the Tribunal, on making proper applications.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
Sub-Court, Bhavani.

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

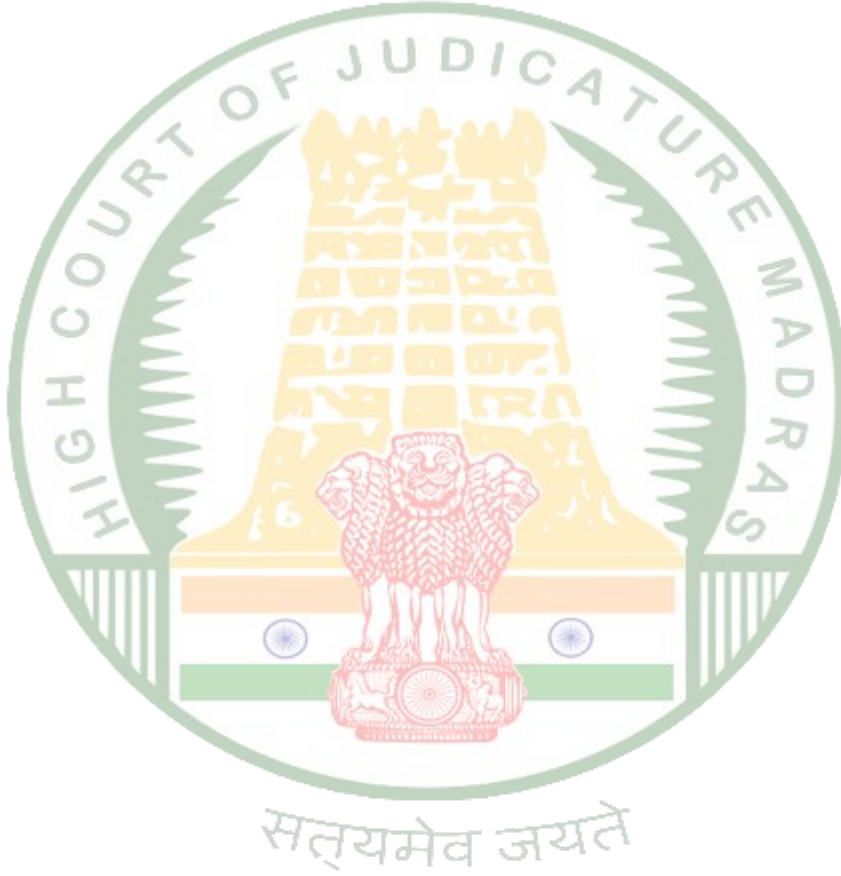
+1cc to Mrs.N.B.Surekha, Advocate SR.No. 64401

+1cc to Mr.S.Kaithamalai Kumaran , Advocate SR.No. 64163

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A.SK(27/02/2020)



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