

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2548 of 2007
and M.P.No.2 of 2007

The Branch Manager,
National Insurance Company Ltd.
Vellore-1.

... Appellant

Vs

Madhu (expired)

1.Jeyamma
2.Nadiya
3.Minor Rekha
4.Minor Prakash
(Minors rep.by their mother,
Jeyamma, the first respondent)
5.Kuppu
6.P.Saraladevi

... Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.12.2004 made in MCOP No.852 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional Special Judge, Dharmapuri at Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondents : No appearance for R6

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.2,13,000/- towards compensation to the respondents 1 to 5 / claimants due to the death of the husband of the first respondent in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 03.03.2000 at about 7.30 p.m., the deceased-Madhu was proceeding in the Rajdoot motorcycle bearing Reg.No.TMS-8248 as a pillion rider, in the Uthangarai - Harur Main Road towards Kumarampatti. At that time, the lorry bearing Reg.No. TN-25-Z-5625 belonging to the sixth respondent

and insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner, at uncontrollable speed, came from behind and hit the motorcycle in which the deceased was travelling. Due to the said impact, the deceased sustained grievous injuries. Initially, the claim petition was filed when the deceased was alive. Later, during the pendency of the proceedings, the deceased died on 04.12.2003 and thereafter, the legal heirs of the deceased have been brought on record. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.2,13,000/- with interest at the rate of 9% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal, having come to the conclusion that the claimants have not proved that the deceased died only due to the alleged injuries, erred in holding the appellant liable to pay the compensation awarded. Thus, according to the learned counsel, compensation ought to have been awarded only for the injuries sustained in the accident. He has not disputed the manner in which the accident took place.

5.This appeal was admitted way back on 10.10.2007 and the appellant Insurance Company has not taken any steps to serve papers to the respondents 1 to 5, even at this length of time. There is no representation for the sixth respondent.

6.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

7.Since the learned counsel for the appellant has not questioned the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, the said finding does not require any interference by this Court.

8.With regard to the quantum of compensation awarded by the Tribunal, P.W.2-Jeyammal, wife of the deceased, deposed before the Tribunal that due to the injuries sustained, the deceased sustained disabilities; he took treatment in the hospital and returned to the house and thereafter he died due to the injuries. The doctor who treated the deceased and issued Ex.P6-Disability Certificate, deposed before the Tribunal that due to the fracture sustained by the deceased in his right leg, there was formation of pus, and consequently his right hand from the shoulder was amputated and he died due to the same on 04.12.2003. Even though the Tribunal has not believed that the deceased died out of the injuries sustained in the accident,

taking note of the facts and circumstances, the Tribunal awarded a sum of Rs.2,10,000/- towards loss of income, loss of love and affection and loss of protection due to the death of the deceased. The Tribunal has also awarded a sum of Rs.3,000/- towards funeral expenses. The Tribunal has considered the materials and evidence in proper perspective and has awarded the above amounts. Further, the amounts awarded by the Tribunal under the above heads are very reasonable. Hence the same are confirmed.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. With regard to the shares of the minors, the same shall continue to be in the bank deposit as ordered by the Tribunal, till the minors attain majority. The interest accrued in respect of the minors, shall be withdrawn by the first respondent-mother once in three months directly from the bank, which shall be utilised for the benefit and welfare of the minors.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

KM

To

1. The Motor Accidents Claims Tribunal
Additional Special Judge, Dharmapuri at Krishnagiri.

Copy To : The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.Arunkumar, Advocate SR.No.60325

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VG II(CO)
GMY(09/10/2019)