

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2729 of 2007
and M.P.No.2 of 2007

The Branch Manager,
United India Insurance Co. Ltd.,
38, Anna Salai, Chennai-2. ...Appellant/2nd respondent

Vs

1.Kala
2.Minor Thamarai Selvi
3.Minor Balu
4.Minor Vignesh
(Minor respondents 2 to 4 are
represented by their mother &
guardian the 1st respondent)
5.Ranjitham ...Respondents1 to 5/ Petitioner
6.Sivaprakasam
(6th respondent stood exparte
before the Tribunal)
.. 6th respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicle Act, 1988, against the judgement and decree dated
17.10.2005 made in M.C.O.P.No.47 of 2004, on the file of Motor
Accidents Claims Tribunal, Additional District and Sessions
Judge, (Fast Track Court No.3), Poonamalli.

For Appellant : Mrs.Vijayakumari Natarajan
For R1 to R5 : No Appearance
For R6 : exparte

J U D G M E N T

This Civil Miscellaneous Appeal arises out of the order and
decree dated 17.10.2005 passed by the Motor Accidents Claims
Tribunal, Additional District and Sessions Judge, (Fast Track
Court No.3), Poonamallee, in MCOP.No.47 of 2004.

2.The case in brief, is as follows:

On 18.07.2003, at about 2.00 a.m., one Harikrishnan was proceeding along with Kannappan, in a bullock cart, after loading mangoes, from Velappanchavadi to Chennai. At that time, the trailer lorry bearing registration No.TDS.8647 belonging to the sixth respondent and insured with the appellant insurance company, came in a rash and negligent manner and hit the bullock cart from behind. Due to the said impact, the said Harikrishnan, who was sitting on the back side of the bullock cart, fell down and the left wheel of the trailer lorry ran over him and he died on the spot. Claiming a compensation of Rs.5,00,000/-, his legal heirs/respondents 1 to 5 herein filed a claim petition. The Tribunal based on the oral and documentary evidence available on record, awarded a total compensation of Rs.5,00,000/- with interest at 9%pa from the date of petition, which shall be payable by the appellant insurance company, within a period of two months, failing which, to pay interest at the rate of 12% p.a. till the date of deposit. Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant / Insurance Company submitted that the Tribunal failed to see that there was no injury caused to the rider of the Bullock Cart, nor any damage to the Cart, which indicated that the driver of the insured vehicle was not driving the vehicle rashly and negligently; and the Tribunal failed to note that the deceased had contributed to the accident by carelessly sleeping on the mango load of the bullock cart, due to which, he fell down and the vehicle ran over him. The learned counsel further submitted that without any documentary proof, the quantum of compensation awarded by the Tribunal is excessive and exorbitant and the same has to be reduced substantially.

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

5.Despite the service of notice and the name of the respondents/claimants having been printed in the cause list, there is no representation on their behalf.

6.Before the Tribunal, the wife of the deceased was examined as P.W.1, who deposed in her evidence that the accident had occurred due to the rash and negligent driving of the driver of the lorry. The testimony of P.W.1 was supported by P.W.2/eye witness/Kannappan, who stated in his evidence that while he was riding the bullock cart, the driver of the lorry drove the vehicle rashly and negligently and hit the bullock cart from behind, as a result of which, the deceased died on the spot. Ex.P1 is the first information report. To rebut the statement so made by the claimants, there was no evidence adduced either in

oral or in documentary on the side of the appellant insurance company. Hence, the Tribunal, based on the available evidence and materials, has rightly come to the conclusion that the driver of the lorry was responsible for the accident and the appellant insurance company being the insurer of the offending vehicle, was liable to pay compensation to the respondents/claimants, which this Court is not inclined to interfere.

7. With regard to the quantum of compensation, P.W.1/wife of the deceased has deposed that her husband/deceased was aged 28 years and was earning Rs.3,000/- per month by selling fruits. However, no authenticated proof was produced to substantiate the same. The Tribunal, based on Ex.P3 postmortem certificate, has taken the age of the deceased as 28 years and adopted the multiplier of 18 as per II Schedule of Motor Vehicles Act; notionally fixed his monthly salary at Rs.3,000/-, after deducting 1/3rd towards his personal expenses, arrived at the annual contribution to his family at Rs.24,000/-; and ultimately determined the compensation under the head "loss of income" at Rs.4,32,000/-. That apart, the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.20,000/- each towards loss of love and affection to the respondents 1 to 4, and Rs.20,000/- towards loss of consortium to the first respondent. Thus, the Tribunal has awarded a total compensation of Rs.5,37,000/-. However, the Tribunal has restricted the same to Rs.5,00,000/- as the claim amount was only Rs.5,00,000/-, which in the opinion of this Court, is fair, just and reasonable taking note of the facts and circumstances of the case and hence, the same need not be interfered. There is also no modification with regard to the rate of interest awarded by the Tribunal.

8. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

9. The appellant / Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the award amount to the bank account of the first respondent through RTGS within a period of one week thereafter. As the respondents 2 and 3, who were minors at the time of accident, would have attained majority by now and hence, the Tribunal shall transfer the award amount to their respective bank accounts, on making proper application. In respect of the fourth respondent, the Tribunal shall invest his share to any one of the nationalised banks in a fixed deposit, till he attains majority and the interest accrued thereon shall be

permitted to be withdrawn by the first respondent once in three months. It is made clear that the ratio of apportionment made by the Tribunal shall remain unaltered.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rst/rk
To

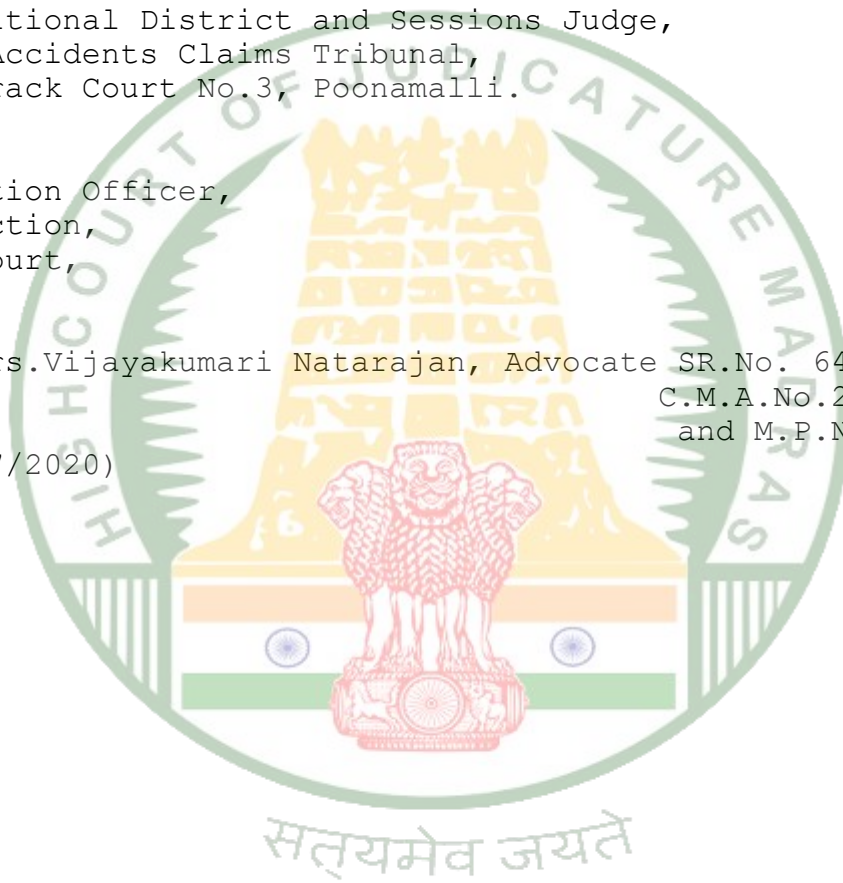
1.The Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.3, Poonamalli.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

+lcc to Mrs.Vijayakumari Natarajan, Advocate SR.No. 64961

C.M.A.No.2729 of 2007
and M.P.No.2 of 2007

A.SK(27/07/2020)



WEB COPY