

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.734 of 2007

The Divisional Manager,

The New India Assurance Company Ltd.,

Motor Third Party Claim Office,

No.69,70 Sheikpet Nadu Street,

Kancheepuram.

... Appellant/2nd Respondent

Vs.

1.Saroja

2.A.Veeramani

3.A.Chitra

4.E.Pandiyan

... Respondents/Petitioners 1 to 3
and first Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.08.2006 made in M.C.O.P.No.115 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.II, Kancheepuram.

For Appellant : Mr.P.G.Padmanabhan

For R1 to R3 : Mr.C.Prabhakaran

सत्यमेव जयते
J U D G M E N T

The facts of the case are that on 13.02.2005 at about 08.15 p.m., the deceased Arumugham was travelling as a coolie in the fourth respondent's van bearing Registration No.TN-25-Z-6129. The said van was proceeding in between Uthiramerur and Kancheepuram. When it reached near a Rice Mill, on account of crossing of one Buffalo in front of the said vehicle, the driver of the vehicle applied sudden brake and lost his control. Thereafter, the van hit against some persons walking on the extreme left side of the road, capsized and fell into a ditch. Due to the impact, the deceased and other coolies who were travelling in the van and also some pedestrians, sustained

multiple grievous injuries. They were admitted in the Government Headquarters Hospital at Kancheepuram. During the course of medical treatment, the deceased succumbed to the injuries. The legal heirs of the deceased, who are the wife, son and daughter, have filed a claim petition before the Tribunal. The Tribunal, based on the materials available on record has awarded a total compensation of Rs.1,41,000/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the same, the appellant Insurance Company has come up with the present appeal.

3.The learned counsel for the appellant / Insurance Company has mainly submitted that the Tribunal has erred in holding that the deceased was a coolie and was working in the lorry for the past three years and that the deceased is not a gratuitous passenger in the vehicle and hence the Insurance Company is not liable to pay any compensation to the claimants. He also submitted that the monthly income of the deceased fixed at Rs.2,000/- is on the higher side and the award amount in toto, is also excessive.

4.Per contra, the learned counsel for the respondents 1 to 3 / claimants submitted that the Tribunal, based on the evidence and documents, has awarded the just compensation, which does not require any interference by this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 / claimants and perused the materials and evidence available on record, carefully and meticulously.

6.A perusal of the award of the Tribunal would go to show that though the driver of the van could not stop the vehicle due to crossing of a buffalo, if the driver of the vehicle had control over the vehicle and drove the same in a normal speed, the accident would have been averted. In the circumstances, the Tribunal concluded that the accident had occurred only due to the rash and negligent driving of the driver of the van. Further, the Tribunal has taken note of the fact that the claimants have admitted that the offending vehicle is a goods vehicle and the deceased travelled in the vehicle only as a coolie. Therefore, the Tribunal held that the appellant herein will not be absolved from its liability to pay compensation.

7.Further, R.W.1-Inspector of Police has stated in his evidence that the persons who travelled in the vehicle, were on their way back from their routine work as coolies. R.W.2-Staff of the Insurance Company, admitted in his evidence that the vehicle in question has been insured with their Insurance

Company. When he was cross examined, he admitted that two coolie workers could be accommodated in a goods vehicle besides the crew members. Placing reliance on all the above, the Tribunal has held that the deceased was not a gratuitous passenger and the appellant Insurance Company cannot be absolved from its liability to pay compensation. Accordingly, the Tribunal has rightly fastened the liability on the appellant insurance company to pay compensation to the claimants, which finding this Court is not inclined to interfere.

8.As far as the quantum of compensation is concerned, the Tribunal has fixed the monthly income of the deceased at Rs.2,000/-, arrived at the annual income of the deceased at Rs.12,000/- after making deduction towards his personal expenses, applied the multiplier of '8' and has arrived at the loss of income at Rs.96,000/-. The Tribunal has also awarded sums of Rs.10,000/-, Rs.30,000/- and Rs.5,000/- towards loss of consortium, loss of love and affection and funeral expenses, respectively. This Court is of the view that the Tribunal has applied the conventional methodologies in a perspective manner and awarded the just compensation, under the said heads and hence, the same need not be interfered.

9.In the result, affirming the award of the Tribunal, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant Insurance Company is directed to deposit the entire compensation amount with interest and costs, as ordered by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondents 1 to 3 / claimants are permitted to withdraw the same as apportioned by the Tribunal, on making proper application.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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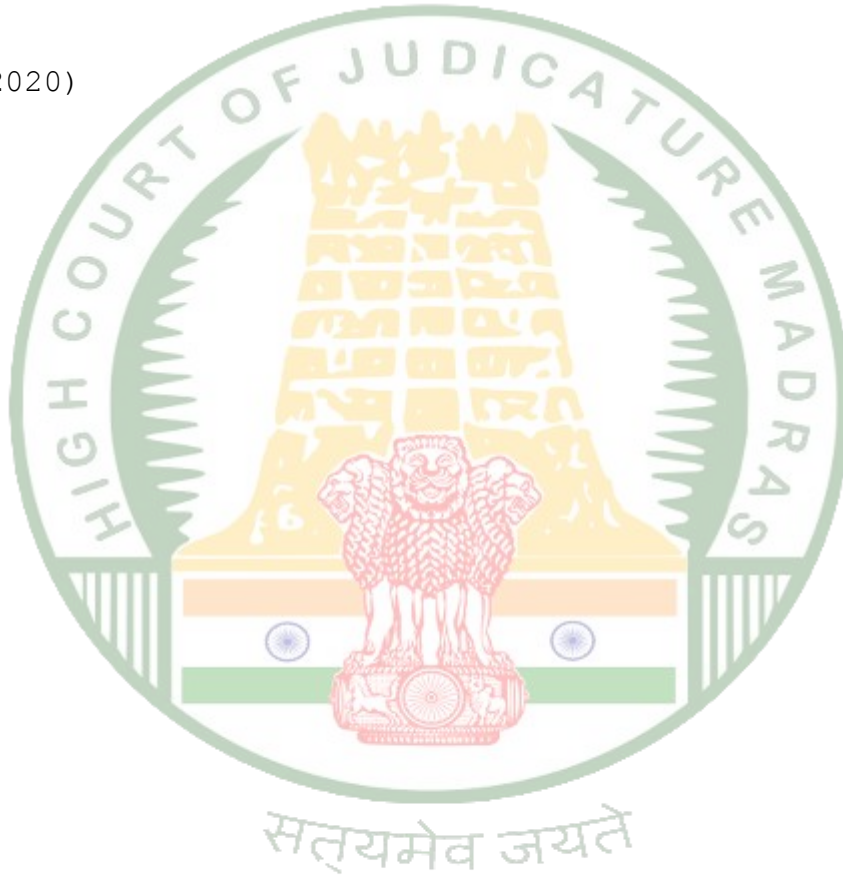
1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.II,
Kancheepuram.

Copy to
The Section Officer,
VR Section, High Court,
Madras.

+1 CC to Mr.P.G.Padmanabhan, Advocate sr 60432.
+1 CC to Mr.C.Prabhakaran, Advocate sr 61156.

C.M.A.No.734 of 2007

SS (CO)
SP(23/07/2020)



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