

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.439 of 2005

1. Rajendran

2. M/s.National Insurance Co.Ltd.,
635, Koodalur Main Road,
Attur Post, Attur Taluk,
Salem District. Appellants/2nd & 3rd Respondent

Vs

1. Shanmugam 1st Respondent/Claimant

2. Rajasekaran

3. Valarmathi
(R2 and R3 were set exparte in the
Lower Court). 2nd & 3rd Respondents/
I and IV Respondents

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 31.07.2002 made in MCOP No.196 of
1998 on the file of the Motor Accidents Claims Tribunal
(Subordinate Judge) at Dharapuram.

For Appellants : Ms.R.Sreevidhya

For Respondents : No appearance for R1

JUDGMENT

This appeal is preferred by the owner of the vehicle and the
Insurance Company against the award of a sum of Rs.1,00,000/-
towards compensation to the first respondent, due to the death
of his son in a motor vehicle accident.

2.The case in brief, is as follows:

On 10.01.1997 at about 07.30 a.m., the deceased Damodharan
(son of the first and third respondents) and the third
respondent herein were walking towards Northern side on the
western edge of the North-South Namakkal - Karur Road near

Velayuthampalayam. At that time, the second respondent herein drove the lorry bearing Reg.No. TN-27-Z-0986, belonging to the first appellant and insured with the second appellant Insurance Company, from South to North direction in a rash and negligent manner at high speed and dashed against the deceased. Due to the said impact, the deceased sustained grievous injuries and died on the spot. The first respondent, who is the father of the deceased, filed a claim petition before the Tribunal, claiming a sum of Rs.5,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,00,000/- 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 Insurance Company has submitted that the mother of the deceased had already filed a petition in O.P.No.608 of 1999 before the Motor Accidents Claims Tribunal, Karur in which a sum of Rs.1,00,000/- had been awarded to her and the Insurance Company had also satisfied the award. He submitted that the Tribunal has failed to note that the claim petition of the mother was filed before the Motor Accidents Claims Tribunal, Karur on 29.01.1997 and as such the present claim is not at all maintainable under law. He further submitted that the first respondent herein, who is the father of the deceased, ought to have proceeded against his wife (mother of the deceased) and he is not entitled to claim any compensation under law separately. Furthermore, he submitted that when the Motor Accidents Claims Tribunal, Karur had already awarded a sum of Rs.1,00,000/- to the mother of the deceased in O.P.No.608 of 1999, the learned Tribunal had adopted a peculiar procedure to assess the compensation amounting to Rs.2,00,000/- for the death of the deceased, for awarding a sum of Rs.1,00,000/- to the father of the deceased. Stating so, he prayed for setting aside the impugned judgment passed by the Tribunal.

5.There is no appearance on behalf of the first respondent / claimant, today, even though paper publication has been effected indicating that this Court will hear this appeal today, pursuant to the order passed by this Court on 24.07.2019.

6.Even though it was put forth on behalf of the appellant Insurance Company before the Tribunal that the present claim made by the father of the deceased is not maintainable, the Tribunal passed the judgment awarding a sum of Rs.1,00,000/- to the first respondent, observing that although it was brought to the notice of the Motor Accidents Claims Tribunal, Karur in O.P.No.608 of 1999 that the father of the deceased is alive, the

Insurance Company has not contended before the said Court that the case in O.P.No.608 of 1999 should not be decided without impleading the first respondent herein, in that proceedings. Further the Tribunal has also observed that even though the first respondent herein and his wife were living separately, it cannot be stated that the first respondent is not the legal heir of the deceased or he is not entitled for any compensation.

7.It is a settled proposition of law that for a single cause of action, compensation cannot be claimed twice. Even if the claim is filed by one of the legal representatives, it is deemed to be for the benefit of other legal representatives also. When the matter has been concluded by Motor Accidents Claims Tribunal, Karur awarding a sum of Rs.1,00,000/- as compensation, it is not correct on the part of the Tribunal to enhance the compensation to Rs.2,00,000/- and thereafter to direct the Insurance Company to pay a sum of Rs.1,00,000/- being the balance amount, after deducting the sum of Rs.1,00,000/- awarded by Motor Accidents Claims Tribunal, Karur. Hence, the impugned judgment and decree passed by the Tribunal are liable to be set aside and accordingly the same are set aside and the Civil Miscellaneous Appeal is allowed. No costs.

8.If any amount had already been deposited by the appellant Insurance Company, the same is permitted to be withdrawn by the Insurance Company.

Sd/-

Assistant Registrar(Spl Cell-Retd Judges)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Subordinate Judges,
The Motor Accidents Claims Tribunal,
Dharapuram.

Copy To

The Section Officer,
VR Section, Madras High Court.

+1cc to Ms.R.Sreevidhya, Advocate in sr.no72821

C.M.A.No.439 of 2005

RGN(CO)

CS/13/02/2020