

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.744 OF 2005

AND

C.M.P.NO.4120 OF 2005

The New India Assurance Co.Ltd.,
Branch Office,
Main Road, Mettupalayam.

.. Appellant/3rd Respondent

Vs.

1.S.Saraswathy @ Sarasu
2.M.Selvam

.. 1st & 2nd Respondents/1st & 2nd Respondents

3.A.Palanisamy
4.M.Rangasamy
(Respondents 3 & 4 ex-parte
in Lower Court

.. 3rd & 4th Respondents/1st & 2nd Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.11.2003 made in M.C.O.P.No.775 of 1994, on the file of the Motor Accidents Claims Tribunal, Additional District Court No.I, Coimbatore.

For Appellant : Mr.N.Vijayaraghavan

For R3 & R4 : Ex-parte

R1 & R2 : Dismissed vide
order dated 14.07.2010

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.90,000/- towards compensation to the respondents 1 and 2 / claimants, due to the death of their daughter in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 08.02.1990 at about 14.45 hours, the deceased Kalaichelvi was proceeding on the southern side of the mud road at Nadoor, Mettupalayam, by walk. At that time, 3rd respondent being the driver of the lorry bearing Registration No.MDF 2215 owned by the 4th respondent and insured with the appellant / Insurance Company drove the lorry in a rash and negligent manner from East to West direction on the Mettupalayam - Annur Main Road and dashed against the deceased Kalaichelvi. Due to the impact, the deceased sustained grievous injuries and died on the spot. Hence, the legal representatives filed the claim petition claiming compensation of Rs.1,00,000/-. The Tribunal, considering the materials and evidence available on record, awarded a total compensation of Rs.90,000/- 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 contended that the Tribunal has erred in fastening the liability on the insurer in a case where the vehicle was not insured with the appellant/ Insurance Company and that the Tribunal has failed to see that the burden is on the claimants to furnish particulars of Insurance Policy. Further, he submitted that the award passed by the Tribunal is excessive.

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

6.The record of proceedings would reveal that as per the order of this Court dated 14.07.2010, this appeal stood dismissed as against the respondents 1 and 2, due to failure on the part of the appellant for taking batta. However, this appeal is taken up for final disposal on merits.

7.The second respondent/father of the deceased was examined as P.W.1, who deposed before the Tribunal that on 08.02.1990 at about 14.45 hours, he was walking along with his daughter Kalaichelvi on the southern side of the mud road at Nadoor, Mettupalayam and at that time, the lorry bearing Registration No.MDF 2215 came in a rash and negligent manner and dashed against his daughter and due to the impact, she sustained grievous injuries and died on the spot. The Tribunal has rightly taken note of the evidence of P.W.1 along with the contents of the F.I.R and other ancillary documents and ultimately fixed the negligence on the part of the driver of the lorry, which finding this Court is not inclined to interfere.

8. With regard to the contention of the Insurance Company that the vehicle in question was not insured with them at the relevant point of time, the Tribunal has analysed Ex.P4-Motor Vehicle Inspector's Report and held that it was registered on 11.01.1991 in the Mettupalayam Branch of the Insurance Company and therefore the Motor Vehicle Inspector would have correctly verified the insurance policy and issued the report and in that circumstance, the said contention of the Insurance Company cannot be accepted. This Court is not inclined to interfere with such finding of the Tribunal as the same has been rendered based on the materials and evidence available on record.

9. With regard to the quantum of compensation, the Tribunal has awarded a sum of Rs.75,000/- towards loss of income. The said sum has been arrived at by fixing the monthly income of the deceased at Rs.1,250/- per month, arrived at the annual income at Rs.15,000/-, deducted 50% of the amount towards her personal expenses and arrived at the sum of Rs.75,000/- towards loss of income for 10 years, on the ground that the deceased would have earned at least for 10 years. The Tribunal has also awarded a sum of Rs.10,000/- towards pain and suffering and Rs.5,000/- towards funeral expenses. The Tribunal has correctly considered the materials and evidence and arrived at the compensation towards contribution of the deceased to the family. The amounts awarded towards other heads are also very reasonable and hence, the same are hereby confirmed.

10. 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 compensation amount with interest and costs, as ordered by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the the claimants/respondents 1 and 2 are permitted to withdraw their respective shares as apportioned by the Tribunal, on making proper application.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Additional District Judge No.I,
Motor Accidents Claims Tribunal,
Coimbatore.

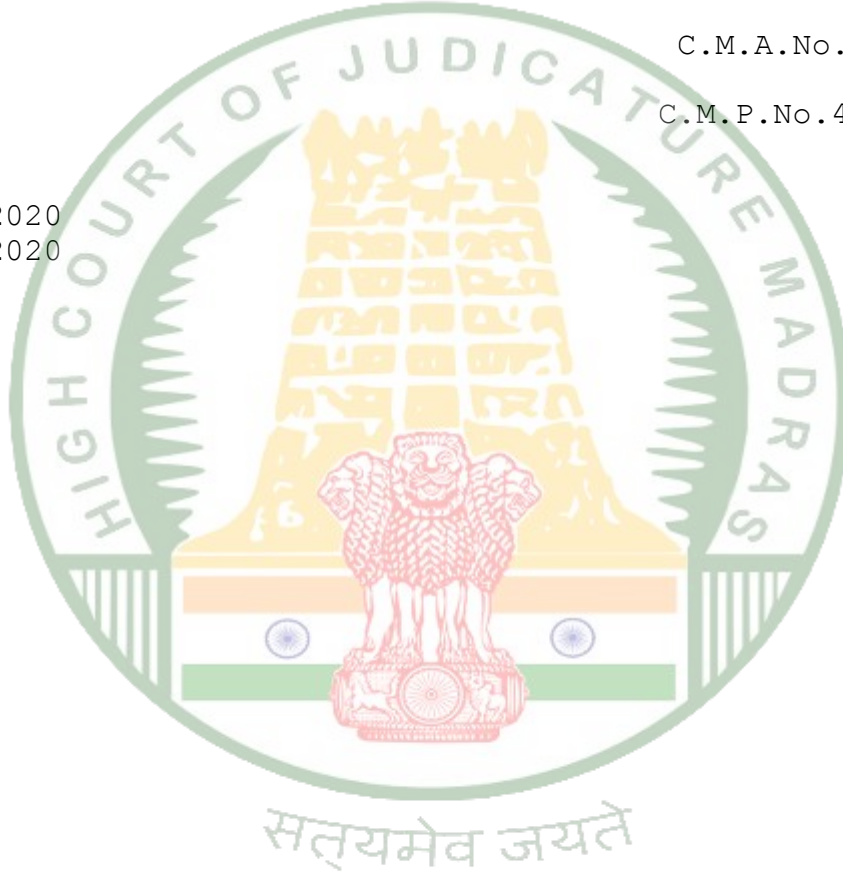
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The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.56085

C.M.A.No.744 of 2005
and
C.M.P.No.4120 of 2005

RK (CO)
CS/06/10/2020
CS/08/10/2020



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