

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1091 of 2009

1.K.Ayyavoo
2.A.Gunasekaran
3.Mani @ A.Thulasimani Appellants/Claimants

Vs

1.N.Thirumugam
2.G.Sivalingam
3.Cholamandalam MS General
Insurance Company Limited,
"Dare House", 2nd Floor, New No.2 (234),
N.S.C.Bose Road,
Chennai-600 001. Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 04.11.2008 made in MCOP No.121 of 2006 on the file of the Motor Accidents Claims Tribunal/ Principal District Court, Erode.

For Appellants : Mr.N.Manokaran

For Respondents: No appearance for R1 and R2

Mr.N.Vijayaraghavan for R3

JUDGMENT

The case in brief, is as follows:

On 30.09.2005 at about 09.30 a.m., the deceased Muthammal was walking on the Chittode - Gobi Main Road, opposite to Chittode Primary Health Centre. At that time, the motorcycle bearing Reg.No. TN-36-H-3639 belonging to the second respondent herein and insured with the third respondent Insurance Company, came in a rash and negligent manner in the wrong side of the road and dashed against the deceased Muthammal. Due to the said impact, the deceased sustained grievous injuries and died on the spot. The appellants are the husband, son and daughter of the deceased. They filed a claim petition before the Tribunal

claiming a sum of Rs.5,70,000/- as compensation. The Tribunal dismissed the claim petition on the ground that as per the contents of the First Information Report, the claimants have not established that the accident had occurred only due to the rash and negligent driving of the driver of the motorcycle and further since the claim petition has been filed under Section 166 of the Motor Vehicles Act, the claimants have not proved the rash and negligent driving on the part of the driver of the vehicle.

2.Challenging the same, the appellants -claimants have filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellants /claimants has submitted that the Tribunal has failed to note that absolutely there is no evidence to show that the deceased was responsible for the accident. He submitted that the First Information Report and the Criminal Court records are not the decisive factors to decide the issue and the Tribunal is expected to consider the oral and documentary evidence produced in the claim petition to decide about the negligence and the quantum of compensation.

4.The learned counsel for the third respondent Insurance Company has submitted that the Tribunal has correctly considered the materials and evidence available on record and correctly dismissed the claim petition, with valid findings and hence the judgment of the Tribunal does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellants / claimants and the learned counsel for the third respondent Insurance Company and perused the materials available on record carefully and meticulously.

6.It is seen that the Tribunal has simply relied upon the First Information Report as per which the deceased crossed the road suddenly and at that time, in spite of the application of brake by the motorcyclist to avoid dashing against the deceased, the motorcycle dashed against the deceased and both the deceased and the motorcyclist have fallen down and the deceased sustained head injuries. First Information Report has been filed by P.W.3, who is the tea shop owner. Only while returning from the said tea shop by the deceased after taking tiffin, the accident had occurred. R.W.2 is the Sub-Inspector of Police. Even though the Tribunal relied upon Ex.P1- First Information Report in rejecting the plea of the claimants, this Court finds force in the submission made by the learned counsel for the claimants that the evidence of P.Ws.1 to 3 have not been controverted by the respondents 1 and 2 and that in the absence of any evidence at the instance of the respondents 1 and 2, the issue relating

to negligence cannot be decided on the basis of the oral evidence of R.Ws.1 and 2, examined on the side of the respondents. Considering the materials and evidence available on record, this Court is of the considered view that the accident had occurred only due to the rash and negligent driving of the driver of the motorcycle and accordingly, the third respondent, who is the insurer of the motorcycle, is liable to pay compensation to the claimants.

7.With regard to the quantum, it would be appropriate to take the monthly income of the deceased at Rs.3,000/- as a caterer. After deducting 1/3rd of the amount towards his personal expenses and adding a sum of Rs.750/- towards future prospects, the monthly contribution of the deceased to the family works out to Rs.2,750/- and the annual contribution works out to Rs.33,000/-. Thereafter, adopting the multiplier of 13, the loss of income works out to Rs.4,29,000/-. It would also be appropriate to award a sum of Rs.15,000/- towards loss of estate to the husband of the deceased, Rs.40,000/- towards loss of love and affection to the son and daughter of the deceased and Rs.15,000/- towards funeral expenses. The details of the compensation are as follows:

HEAD	AMOUNT (Rs.)
Loss of income	4,29,000/-
Loss of estate	15,000/-
Loss of love and affection	40,000/-
Funeral expenses	15,000/-
TOTAL...	4,99,000/- =====

Thus, the appellants / claimants are entitled to the compensation of Rs.4,99,000/- and the interest rate shall be 7.5% per annum which shall be calculated from the date of filing of this appeal.

8.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

9.The third respondent Insurance Company is directed to deposit the compensation of Rs.4,99,000/- with interest at the

rate of 7.5% per annum, from the date of filing of this appeal, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants / claimants shall withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM
To

1.The Motor Accidents Claims Tribunal
Principal District Court, Erode.

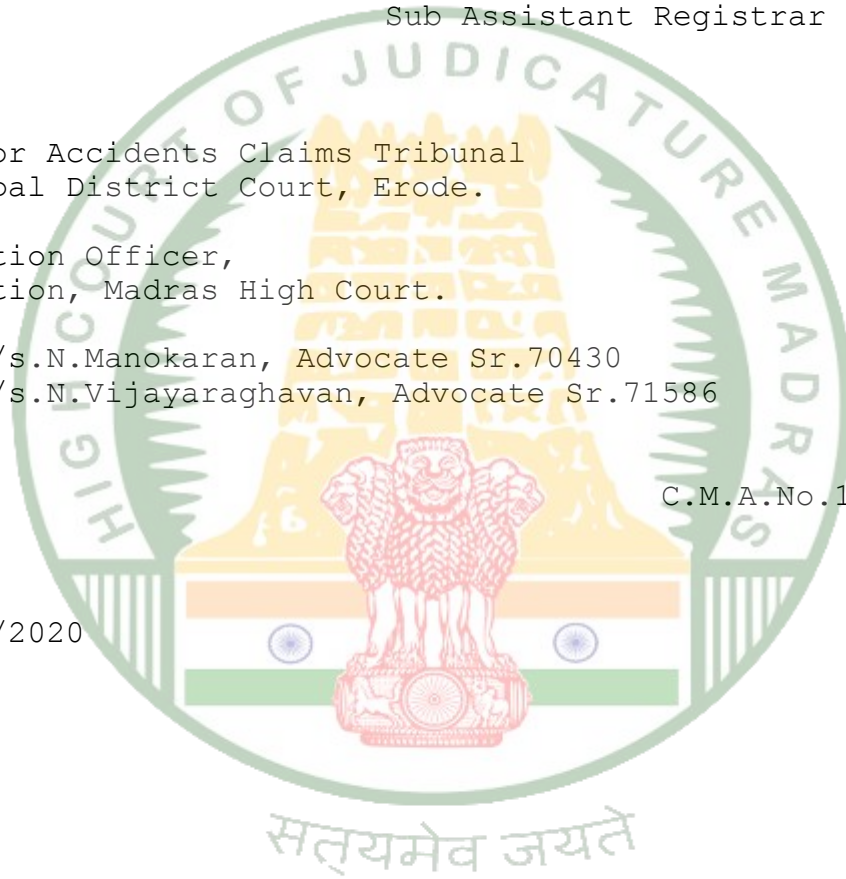
2.The Section Officer,
VR Section, Madras High Court.

+1cc to M/s.N.Manokaran, Advocate Sr.70430

+1cc to M/s.N.Vijayaraghavan, Advocate Sr.71586

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