

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM:

THE HON'BLE Mr.JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1454 of 2009
and
MP.No.1 of 2009

National Insurance Company Ltd.,
Represented by its Branch Manager,
78, Tiruvenkataswamy Chetty Street
Erode. Appellant

...vs...

1. S.Subbathal
2. R.Rajendran
3. Venkatachalam
4. Kanniappan Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the learned Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.V) at Tiruppur in M.C.O.P.No.1472 of 2006 dated 22.07.2008.

For Appellant : Ms.N.B.Surekha

For Respondents: Mr.S.S.Swaminathan for R1 to R3

J U D G M E N T

This appeal is preferred by the Insurance Company/insurer as against the award passed by the Claims Tribunal in M.C.O.P.No.1472 of 2006 dated 22.07.2008.

2.The brief facts of the case are as follows:

On 03.11.2006 at about 10.30 hours, one Ramasamy Gounder was proceeding in the Avinashi to Annur Road, Attayampalayam Pudur by walk. At that time, the moped bearing Reg.No.TN-40-X-3576 came from behind in a rash and negligent manner and dashed against him. Due to the impact, he sustained injuries and succumbed to the same. Hence, his legal representatives have

filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as total compensation. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.1,38,000/- with interest at the rate of 7.5% per annum from the date of petition. The details of the same are as under:

Sl.No	Heads	Amounts granted by the Tribunal
1.	Loss of Dependency	Rs.1,20,000/-
2.	Loss to Estate	Rs. 5,000/-
3.	Loss of Consortium	Rs. 5,000/-
4.	Loss of love and affection	Rs. 5,000/-
5.	Funeral Expenses	Rs. 3,000/-
	Total	Rs.1,38,000/-

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

4.The learned counsel for the appellant/insurer has submitted that the Tribunal, after rendering a finding that the appellant cannot be fastened with the liability to pay compensation, erroneously directed the appellant to pay compensation to the claimants and thereafter recover the same from the owner of the vehicle / fourth respondent herein. On the other hand, it is submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.Per Contra, the learned counsel for the respondents 1 to 3 / claimants has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

6.P.W.2 is the eye-witness to the accident. He deposed before the Tribunal that when he was standing near the accident spot, the deceased Ramasamy was walking from West to East direction in the Avinashi - Annur Road at the left extreme side of the road and at that time, the moped in question came from behind in a rash and negligent manner and dashed against the deceased. It is also seen that the complaint with regard to the accident has been given by one Kumarasamy, who is residing near the accident spot, based on which the First Information Report has been registered. Further, no contra evidence has been let in on the side of the appellant herein, in this respect. Hence, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent riding of the rider of the moped, which factual finding this Court is not inclined to interfere.

7.It was put forth before the Tribunal on the side of the Insurance Company that the driver of the moped was not having the valid driving licence to drive the vehicle at the relevant point of time and the said contention has been accepted by the Tribunal on considering the materials and evidence available on record, and accordingly ordered the Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle. Having given a finding that the accident had occurred only due to the rash and negligent riding of the rider of the moped, the Tribunal has directed the appellant Insurance Company, being the insured for the said vehicle, to pay the compensation to the claimants and since there was violation of policy conditions, the Tribunal permitted the Insurance Company to recover the compensation from the owner of the vehicle. The Tribunal has correctly considered the materials and evidence and fixed the negligence on the part of the rider of the moped and has correctly ordered for pay and recovery.

8.As far as the quantum of compensation awarded by the Claims Tribunal is concerned, the Tribunal has relied upon the exhibits, evidence of witnesses, II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards these heads are reasonable and justifiable and hence the same are confirmed.

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

10.The appellant / Insurance Company is directed to deposit the entire compensation amount, along with interest and costs, as awarded 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 respondents 1 to 3 / claimants are permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vv/km

To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.V, Tiruppur

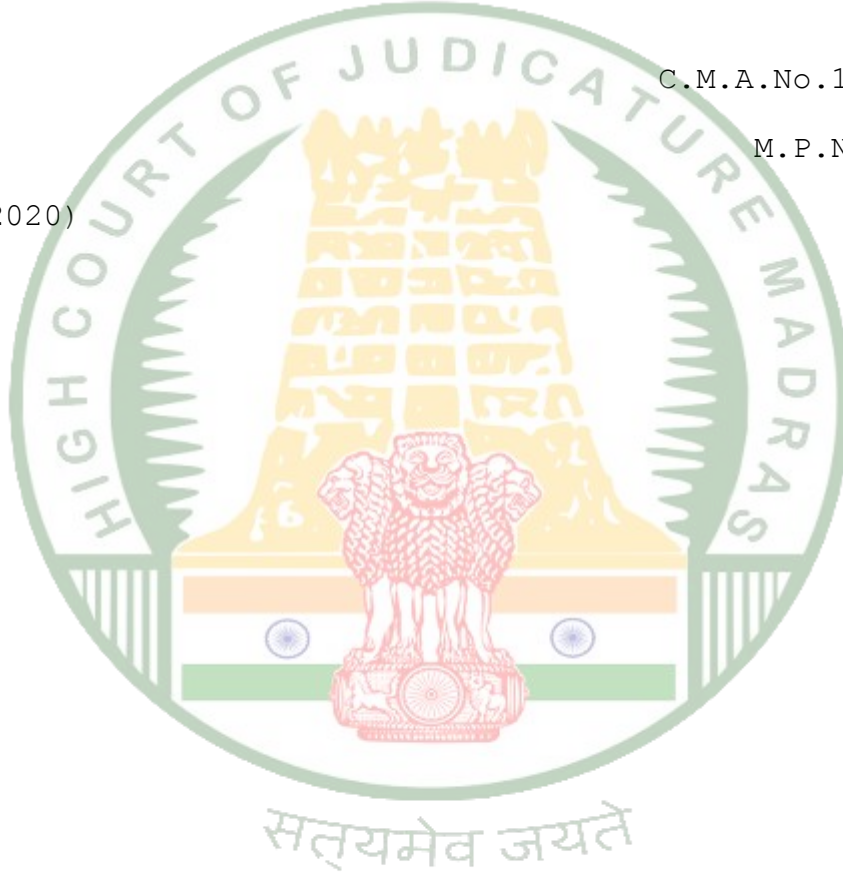
2.The Section Officer,
V.R.Section,
Madras High Court.

+lcc to Mr.S.S.Swaminathan, Advocate, S.R.No. 68041

+lcc to Mr.N.B.Surekha, Advocate, S.R.No.68002

C.M.A.No.1454 of 2009
and
M.P.No.1 of 2009

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