



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.07.2019
CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3568 of 2008
& M.P.No.1 of 2008

M/s.The New India Assurance Company Ltd.,
No.435, O.B.Road,
R.S.Puram, Coimbatore Town,
Coimbatore-2.

.... Appellant/Respondent No.2

Vs.

1. Madhammal
2. Kanthamani
3. Minor Kumar
4. Minor Meena
5. Minor Murugan
(Minors represented by their mother
and Guardian Kanthamani)

6.Rajendran

7.The New India Assurance Co.Ltd.,
Parimalam Complex, Mettur Road,
Erode Taluk.

(R-6 set exparte in the lower Court)..Respondents/
R7 given up in the Appeal Petitioner and
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 15.02.2008 made in MCOP No.257 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court No.IV) at Bhavani, Erode District.

For Appellant : Mrs.R.Sree Vidhya
For R-1 to R-5 : No Appearance
For R-6 : Exparte

R7 : Given up in the Appeal

J U D G M E N T

This appeal is directed by the Appellant/Insurance Company against the judgement and decree made in MCOP No.257 of 2007, dated 15.02.2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court No.IV) at Bhavani, Erode District.



2. The Motor Accident Claims Tribunal has awarded a sum of Rs.4,98,000/- as compensation to the family of one Abimannan, 27 years old, doing Sugar Cane business, who died in a road accident that happened on 16.08.2006. On the fateful day, the aforesaid Abimannan, was travelling in a Van, which due to rash and negligent driving by its driver, dashed against a tree, leading to his death. The mother, wife and three children are the claimants, who filed the claim petition claiming compensation of Rs.10,00,000/-.

3. It is the contention of the appellant, before the Tribunal as well as this Court that the deceased is a gratuitous passenger in the goods vehicle and therefore, liability cannot be fastened on the appellant herein.

4. The Tribunal, after perusing the FIR and Mahazars registered by the Police and based on the witness account, held that the accident had happened due to the rash and negligent driving of the Van driver and hence, the appellant herein is liable to compensate the claimants. The Tribunal has fixed the compensation by computing various factors such as the age of the deceased, his potential income etc., and ultimately arrived at a sum of Rs.4,98,000/- as compensation.

5. A perusal of the award passed by the Tribunal would show that it has discussed about the liability of the insurer relying on the decisions reported in 2007 (2) TN MAC 66 (SC) Oriental Insurance Co.Ltd., Vs.Srij Mohan & others, 2007 (2) TN MAC 548 National Insurance Co.Ltd., Vs.Kannan & others, 2007 (2) TN MAC 98 Mrimuthammal @ Mrimuthu & others vs.M/s.R.P.P Constructions (P) Ltd., & 5 others and 2007 (2) L.W.704 New India Assurance Co.Ltd., Vs.Vadwati & others and ultimately came to the conclusion that the deceased was an employee and not the gratuitous passenger of the vehicle in question. The findings of the Tribunal also support the provisions as envisaged in Section 147 of the Motor Vehicles Act, 1988.

6. So far as the quantum of compensation awarded by the Claims Tribunal is concerned, the Tribunal has taken the monthly income of the deceased at Rs.3,000/- and after deducting 1/3rd towards personal expenses and applying the multiplier of 12, calculated the loss of income at Rs.4,32,000/-, which in the considered view of this Court, is perfectly valid, since the same is assessed based on conventional basis. Further, the award passed under other heads and pay and recovery are based on settled principles of law.

7. In such view of the matter, the findings on negligence, quantum, as well as pay and recovery rendered by the claims Tribunal are perfectly valid and justifiable and the same do not



call for any interference by this Court.

8. In the result, affirming the award of the Tribunal, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company shall deposit the entire compensation amount, along with interests 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.

9. At this juncture, it is submitted that the minor claimants would have attained majority by now. Hence, on such application being taken out by the claimants, the Tribunal is directed to transfer the deposited amount to the Savings Bank Accounts of the claimants / respondents 1 to 5 herein, within one week, through RTGS, as per the ratio of apportionment made by the Claims Tribunal, else the share of the minor claimants shall be deposited in any one of the Nationalized Banks till they attain majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimants, once in three months, directly from the Bank, under intimation to the Tribunal. Consequently, the connected MP is closed. For the sake of repetition, it is made clear that the pay and recovery ordered by the Tribunal shall remain unaltered.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kv / srk

To

1. Motor Accident Claims Tribunal
(Additional District Judge)
(Fast Track Court No.IV) at Bhavani,
Erode District.

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

+1 cc to M/s.R.Sree Vidhya Advocate sr55607

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aa28/11/2019