

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1683 of 2009
and M.P.No.1 of 2009

National Insurance Co.Ltd.,
Bhavani.

... Appellant/2nd respondent
Vs

1.Rasammal
2.Minor. Periyathambi
(Rep. through his next friend and mother Rasammal)
3.Ramayee ... Respondents/ Petitioners
4.K.Vivekanandan
(4th Respondent herein was set ex-parte)
...4th Respondent/ 1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 25.09.2008 made in MCOP No.24 of 2006 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Bhavani.

For Appellant : Mr.K.Padmanabhan
For R3 : Mr.S.Lakshmanasamy
For R4 : Ex-parte

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.4,88,700/- towards compensation to the respondents 1 to 3 / claimants for the death of one Palanisamy, who died in a motor vehicle accident.

2.The case in brief, is as follows:

On fateful day, ie. on 07.05.2005, the deceased was riding his TVS 50 Moped bearing Reg.No.TAQ-8704 from Chittar towards his house at Kannankaradu in the extreme left side of the Mettur to Bhavani Main Road. When he reached near Mahalakshmi Tractor Works, a Maruthi Car bearing Reg.No.TN-36-F-3999 belonging to the fourth respondent and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the TVS 50 Moped. Due to the said impact, the deceased sustained grievous injuries in his head. Immediately, he was taken to P.G.R.Hospital at Bhavani. In spite of the best treatment, he died on 10.05.2005. Hence, the legal heirs of the deceased, who are the wife, minor son and mother, filed a claim petition before the Tribunal. On consideration of the materials and

evidence available on record, the Tribunal awarded a total compensation of Rs.4,88,700/- with interest at the rate of 6% 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 submitted that only the deceased was responsible for the accident. He also submitted that the Tribunal has erred in adopting the multiplier of 16, instead of 10, since the deceased was 40 years at the time of accident. Hence, the learned counsel submitted that the compensation awarded by the Tribunal has to be reduced.

5.The learned counsel for the third respondent has submitted that the Tribunal has considered the oral and documentary evidence in proper perspective and has granted the compensation and hence the same does not require any interference by this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.It was deposed before the Tribunal by P.W.2-Gopal/eyewitness to the accident that 07.05.2005 at about 07.00 hours while he was standing near his workshop, the deceased was riding his motorcycle and the Maruthi Car belonging to the fourth respondent bearing Reg.No.TN-36-F-3999 came in a rash and negligent manner and dashed against the deceased. The testimony of PW2 was supported by Ex.P1/FIR, Ex.P2/observation magazar, Ex.P3/rough sketch and Ex.P7/MVI report. Considering the oral and documentary evidence adduced by the parties, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Maruthi Car insured with the appellant insurance company. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal and hence, the same is confirmed as such.

8.With regard to the compensation, the Tribunal fixed a sum of Rs.3,000/- per month as the notional income of the deceased, in which 1/3rd amount was deducted towards his personal expenses. Considering the age of the deceased as 40 years, the Tribunal has adopted the multiplier of 16 and arrived at the compensation under the head 'loss of income' at Rs.3,84,000/- (Rs.24,000/- X 16). The Tribunal has also awarded Rs.22,690/- towards medical expenses, Rs.25,000/- towards loss of consortium to the wife of the deceased, Rs.25,000/- towards loss of love and affection to the second respondent, Rs.25,000/- towards loss of love and affection to the mother of the deceased, Rs.2,000/- towards transportation, Rs.5,000/- towards funeral expenses. The

amounts awarded by the Tribunal under the above heads are just and reasonable and hence, the same need not be interfered by this Court.

9. 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 award amount as ordered by the Tribunal with interest and costs after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, on making proper application. The share of the second respondent (minor) shall continue to be in the Fixed Deposit, as ordered by this Court, till he attains majority. The interest accrued in the said deposit shall be permitted to be withdrawn by the first respondent, once in three months directly from the bank.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gbi
To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Bhavani.
2. The Section Officer,
VR Section, Madras High Court.

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and M.P.No.1 of 2009

pm
A.SK(27/02/2020)

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