

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

C.M.A.No.1953 of 2010
and
M.P.No.1 of 2010

National Insurance Company Ltd.,
No. 751 Mount Road,
Chennai - 600 002.Appellant/2nd respondent

Vs

1. V. Rajeswari
2. G. KaruppayeeRespondents 1 & 2/ Petitioners
3. P. Selvaraj3rd Respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree dated 19.10.2009 and made in M.A.C.T.O.P.No. 3531/2005 on the file of the Motor Accident Claims Tribunal, Chennai (In the II Court of small causes, Chennai)

For Appellant : Mrs.S. Vadivel
For Respondent 1 and 2 : M/s A.N.Viswantha Rao

JUDGMENT

This appeal has been preferred against the Judgment and decree dated 19.10.2009 and made in M.A.C.T.O.P.No. 3531/2005 on the file of the Motor Accident Claims Tribunal, Chennai (In the II Court of small causes, Chennai)

2.The case in brief, is as follows:

On 04.05.2005 at about 11:30 hours, when the deceased Murthy was riding the fish Cart from Kancheepuram to Chennai a Van bearing Registration No.TNP-5352, driven by its driver in a rash and negligent manner and dashed against the Fish Cart and caused the accident, in which the deceased sustained severe injuries and died on the way to the Hospital. The first and

second respondent herein, who are the legal heirs of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.8,00,000/- as compensation. On a consideration of the materials and evidence available on record, the Tribunal has arrived at the total compensation of Rs.6,40,500/- with interest at the rate of 9.5% p.a., from the date of petition till the date of deposit.

3. Challenging the same, the appellant has filed the present Civil Miscellaneous Appeal.

4. The learned counsel for the appellant/Insurance Company has submitted that the negligent driving of the driver of the van is the cause for the accident and he does not possess valid driving licence at the time of accident. As the driver has invited the accident, the liability fastened against them is improper and prays to exonerate them from the liability.

5. The learned counsel for the claimants/first and second respondent has submitted that the Tribunal has properly considered the evidence and materials available on record and has arrived at the compensation, which is just, fair and reasonable and fastened the liability against the appellant and 3rd respondent herein, who are the Insurer and owner of the vehicle respectively, hence the same need not be interfered with by this Court.

6. Heard both sides and perused the materials available on record carefully and meticulously.

7. Before the Tribunal, 2 witness and 6 exhibits were marked and on the side of the appellant and 1 witness and 3 exhibits were marked on the side of the respondent.

8. With regard to quantum, considering the avocation of the injured, the gross salary was taken as Rs.4,000/- and the annual salary was arrived at Rs.48,000/- and after deducting 1/3rd towards personal expenses Rs.16,000/- and by applying 18 as multiplier, the compensation under the head loss of income was arrived at Rs.5,76,000/-. (Rs.32,000 x 18). Considering the other relevant materials, the Tribunal has awarded Rs.2,000/- towards Funeral expenses, Rs.2,500/- towards loss of estate, and Rs.50,000 towards love and affection. As the first petitioner lost her husband in the young age Rs.10,000/- was granted towards loss of consortium. Thus, the total compensation was quantified at Rs.6,40,500/- The findings rendered on quantum by the Tribunal are also based on settled principles of law, probabilities of case and weightage of evidence. Hence, this Court is of the view that interference on quantum is also uncalled for.

9. With regard to the negligence aspect, the Tribunal further observed that the negligent driving of the van is the cause for the accident. The Tribunal, considering the manner of the accident, and relying upon the evidence, has fixed the negligence on the part of the driver of the van and fastened the liability on the owner of the vehicle at 50% and on the claimant at 50%. This Court is of the view that the findings rendered by the Tribunal has to be modified to certain extent and fix the entire liability on the part of the owner of the vehicle as the driver of the vehicle does not possess valid driving license at the time of the accident.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the award amount, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the owner of the vehicle/3rd respondent herein. On such deposit being made, the Tribunal is directed to transfer the deposited amount, through RTGS to the respondents 1 and 2. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar
(Arbitration)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
II nd Judge,
Court of Small Causes, Chennai

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No. 78911

+1cc to Mr.N.Viswanatha Rao, Advocate, S.R.No. 79598

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GN(25/02/2020)