

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2358 of 2009

M/s National Insurance Company
58, Rajaji Street, Kangayam,
Erode District.Appellant/R2

Vs

1. Devambal, wife of Eswaran
2. Chandra Praba
D/o.EswaranRespondents 1and 2/Claimants
3. Muthusamy
S/o.Samiappa GounderRespondent No.3/R1
(Exparte Beofre the Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment passed in M.C.O.P.No.1206 of 2005 dated 22.08.2008 on the file of the Additional District Judge, Motor Vehicle Accident Claims Tribunal, Fast Track Court No.4, Tiruppur.

For Appellant : Mrs.N.B. Surekha
For Respondents

1 and 2 : Mr.Ma.Pa. Thangavel

JUDGMENT

This appeal is preferred by the Appellant/ Insurance Company against the Decree and Judgment passed in M.C.O.P.No.1206 of 2005 dated 22.08.2008 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.4, Tiruppur.

2.The case in brief, is as follows:

On the fateful day, ie. on 12.10.2005 at about 10:15 hours when the deceased-Indumathi was riding her two wheeler near Vivekananda School, Vaikkal Madu on Tiruppur - Dharapuram Main Road, the lorry bearing Registration No:KA-01-AC-1959 belonging to the third respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the two wheeler. Due to the

impact, the deceased sustained multiple and grievous injuries and subsequently died. The legal heirs of the deceased have filed a claim petition claiming a compensation of Rs.10,00,000/-. The Tribunal, on consideration of the materials and evidence available on record, has arrived at the total compensation of Rs.7,05,100/- with interest at the rate of 7.5% p.a., 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/Insurance Company contended that the Tribunal erred in holding that the driver of the lorry was responsible for the accident. She further contended that in the absence of any relevant proof regarding the age, avocation and income of the deceased, the award of the Tribunal suffers from infirmity, which requires interference by this Court.

5. Per contra the learned counsel for the respondents 1 and 2 / claimants contended that the accident had taken place due to the inattentive attitude of the driver of the lorry and the averments in the claim petition regarding the age, avocation and income are true. He further contended that the award passed by the Tribunal is just and reasonable.

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

7. Before the Tribunal, the mother of the deceased was examined as P.W.1, who has deposed that the accident had taken place due to the inattentive attitude of the driver of the lorry. P.W.2/Madheeswaran, eyewitness to the accident, deposed before the Tribunal that the rash and negligent driving of the driver of the lorry is the cause for the accident. The evidence of P.W.2 corroborates with the contents of Ex.P1/F.I.R, which supports the case of the claimants rather than the appellant. R.W.1/Motor vehicle Inspector in his evidence has stated that the headlight of the two wheeler was broken and there were some damages caused to the two wheeler. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, which factual finding this Court is not inclined to interfere.

8. With regard to the quantum of compensation awarded by the Tribunal, as against the claim made by the claimants that the deceased was doing embroidery work and earning a sum of Rs.10,000/- per month, the Tribunal has fixed the monthly income of the deceased at Rs.5,400/-, deducted 1/3rd of the amount

towards personal expenses of the deceased, adopted the multiplier of 16 and arrived at the sum of Rs.6,91,200/- towards loss of income. Further the Tribunal has awarded Rs.5,000/- towards funeral expenses, Rs.7,000/- towards loss of love and affection, Rs.1,700/- towards Transportation Expenses and Rs.200/- towards damage to clothes. This Court is of the view that the findings rendered on quantum by the Tribunal are based on settled principles of law, probabilities of case and weightage of evidence. Hence, the award passed by the Tribunal is perfectly valid in the eye of law and no interference is required.

9. In the result, the Civil Miscellaneous Appeal is dismissed. 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 claimants are permitted to withdraw the same on making proper application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk/smn

To

1.The Motor Accidents Claims Tribunal
Additional District Judge-cum-
Fast Track Court No.4, Tiruppur.

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

+1cc to Ms.N.B.Surekha, Advocate Sr.71743
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.71760

C.M.A.No.2358 of 2009

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srg 12/02/2020