

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1374 of 2011 and
M.P.No.1 of 2011

Branch Manager,
National Insurance Co. Ltd.,
Avinashi Road,
Tiruppur.

...Appellant/2nd Respondent

Vs.

1.V.P.Yasodha
2.Minor Saravanakumar
(Minor rep. by mother & NF 1st respondent)

... Respondent 1 to 4/Petitioner 1 to 4

3.Mayilathal
4.Mayilsamy
5.S.Ramila

... 5th Respondents/1st Respondent

R5 Exparte before Tribunal

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 30.03.2009 in M.C.O.P.No. 145 of 2006, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.4, Coimbatore at Tiruppur.

For Appellant : Mr.M.B.Raghavan
For Respondents : Mr.MA.P.Thangavel
for R1 to R4

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 145 of 2006, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court No.4, Coimbatore at Tiruppur. They have filed the present appeal questioning both the liability to pay compensation and the quantum of compensation awarded by the Tribunal.

2. The brief case of the respondents 1 to 4/claimants is as follows:

(i) The deceased was aged 53 years on the date of the accident and was working as Assistant Headmaster, Government Higher Secondary School, Udukkampalayam and was also doing Agriculture.

(ii) On 08.07.2002, at about 06.00 pm, when the deceased Amaravathisamy was going by a motor bike bearing Registration No. TN 41 E 4847 from west to east in the Anaimalai to Udumalai road, near Reddiyar madam bus stop keeping left side of the road. By that time, a Tempo van bearing Registration No. TCT 9549 driven by the driver of the first respondent rashly and negligently, dashed against the deceased. Due to the accident, the deceased sustained grievous injuries all over the body. Immediately, after the accident, the deceased Amaravathisamy was taken to the Government Hospital, Pollachi and subsequently, succumbed to injuries. According to the respondents 1 to 4/claimants, the rash and negligent driving of the driver of the said Tempo van belonging to the fifth respondent herein, was the cause of the accident, and that, since, the Tempo van was insured with the National Insurance Company Limited, both of them are jointly and severally liable to pay compensation of Rs.25,00,000/- to the respondents 1 to 4/claimants.

3. The owner of the Tempo van remained absent before the Tribunal and therefore he was set ex-parte. The National Insurance Company Limited contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.8,89,000/- together with interest at the rate of 7.5% per annum to the respondents 1 to 4/claimants. Aggrieved over the quantum of compensation awarded by the Tribunal, the National Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellant contended that the appeal has been filed by the National Insurance Company Limited, on the ground that the driver of the Tempo van bearing Registration No. TCT 9549 involved in accident dated 08.07.2002 had no valid driving licence and therefore, they are not liable to pay compensation to the respondents 1 to 4/claimants.

5. Heard both sides and perused the materials available on record.

6. Eventhough, a specific plea in regard to the driving licence of the driver of the Tempo van was taken by the Insurance Company in the counter statement, it appears from the lower court records that no oral or documentary evidence has been adduced in this regard. In the absence of any positive evidence much less any evidence, this Court is of the considered

view that the fact that the driver of the offending vehicle does not possess any valid driving licence on the date of the accident is not proved in the manner known to law. Hence, the finding of the Tribunal is correct and does not warrant any interference at this appellate stage.

7. As far as the quantum of compensation is concerned, the Tribunal based on the evidence available on record, taken the income of the deceased as Rs.20,520/- per month, the age of the deceased as 53 years, adopted multiplier of 5, deducted 1/3rd towards the personal expenses of the deceased and awarded a sum of Rs.8,20,800/- towards 'future loss of income of the deceased'. The compensation awarded under other heads are also just and reasonable. Therefore, this court feels that the award passed by the Tribunal needs no interference. Hence, the plea taken by the Insurance Company stands negative.

8. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) The order passed by the Tribunal is upheld.

(iii) It is brought to the notice of this Court, that the appellant - Insurance Company has already deposited the entire amount awarded by the Tribunal to the credit of M.C.O.P.No.145 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Tract Court No.4, Coimbatore at Tiruppur and the respondents 1, 3 and 4 have already withdrawn 50% of their respective apportioned share together with proportionate interest.

(iv) The respondents 1,3 and 4 are permitted to withdraw the balance amount as apportioned by the Tribunal together with proportionate interest.

(v) The second respondent would have attained majority by now, and so, he is also permitted to withdraw his share together with proportionate interest as apportioned by the Tribunal.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mbi

To

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

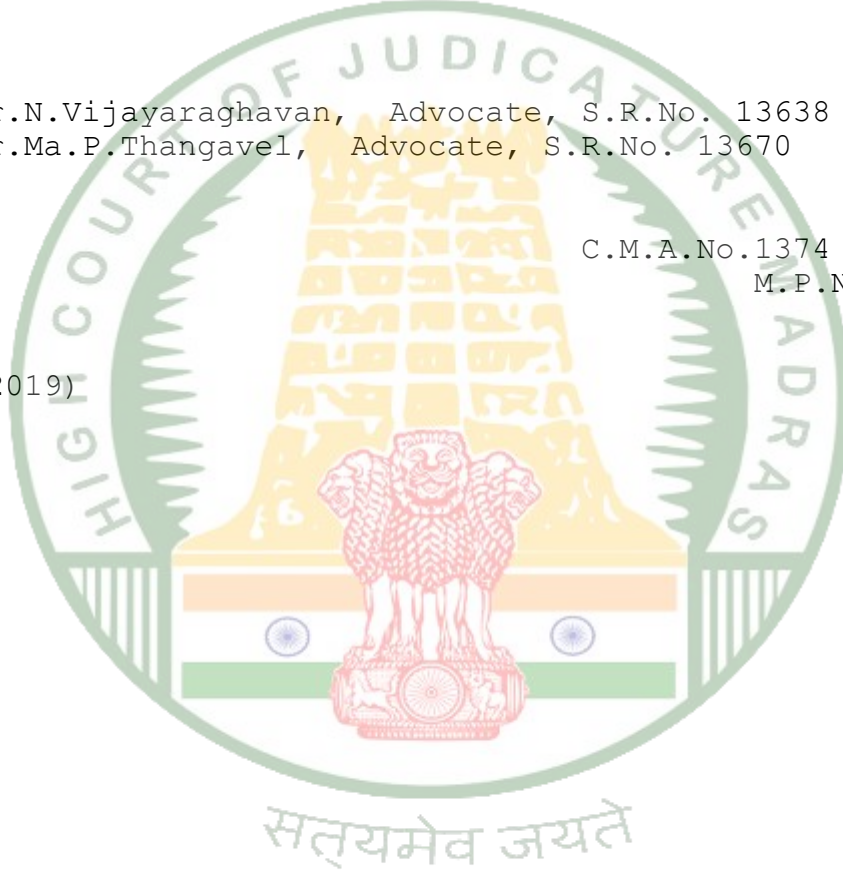
Copy To

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 13638
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 13670

C.M.A.No.1374 of 2011 and
M.P.No.1 of 2011

AP (CO)
GN (09/05/2019)



WEB COPY