

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3327 of 2009

and

MP.No.1 of 2009

M/s.National Insurance Company Limited,
Kangayam,
Erode District.

.. Appellant/3rd Respondent

..Vs..

1. Rani
2. Minor Rajeshkumar
3. Minor Dineshkumar
- Minor represented by
1st respondent herein

..Respondents 1 to 4/
Petitioners

4. Selvaraj
5. Kuppusamy
6. Ramasamy

..Respondents 5 &6/
Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 19/01/2009 passed in MCOP.No.203 of 2007 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge FTC - 3) at Dharmapuri Erode.

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr.V.Ragunathan
for S.Dhanasekaran for R1 to R4
No appearance for R5 and R6

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JUDGMENT

The Appellant / National Insurance Company, is the third respondent in MCOP.No. 203 of 2007 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Fast Track Court No.III, Dharmapuri. The respondents 1 to 4 / claimants filed the claim petition seeking compensation of Rs.25,00,000/- for

the death of one Rajendran, husband of the first claimant, father of the claimants 2 & 3 and son of the claimant 4 in a road accident on 19.12.2006.

2. The case of the claimants is that on 19.12.2006, Rajendran (deceased) was riding his two wheeler bearing Registration No.TN-33-T-2687 on Kangeyam - Dharapuram Main Road and at about 17.00 hours, when he was nearing Kalimedu, Amman Auto carriage, a speeding Auto bearing Registration No.TN-32-V-5176 hit the two wheeler, as a result of which, Rajendran fell down, sustained grievous injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the Auto belonging to the sixth respondent was the cause of the accident and that since the said Auto was insured with the National Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner and driver of the Auto remained absent before the Tribunal and therefore, they were set ex-parte. The National Insurance Company contested the claim petition on all the grounds available to the insured. The learned Subordinate Judge / Motor Accident Claims Tribunal, Fast Track Court No.III, Dharmapuri after analysing the evidence on record, awarded a compensation of Rs.14,35,000/- together with interest at the rate of 7.5% per annum to the claimants. Aggrieved over the orders passed by the Tribunal, the National Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.R.Sreevidhya, learned counsel appearing for the appellant contended that though the rider of the two wheeler (deceased) was also responsible for the accident, the Tribunal did not fix contributory negligence on him. She further contended that the award passed by the Tribunal is also on the higher side.

5. Heard Mr.V.Ragunathan, learned counsel appearing for the respondents 1 to 4 / claimants. No appearance on behalf of the respondents 5 and 6.

6. A perusal of the records shows that the First Information Report was registered against the driver of the Auto and the police after completing investigation had laid a final report against the driver of the Auto as evidenced by a copy of the final report marked as Ex.P6. Palanisami (PW2) is an eyewitness to the occurrence and he has clearly deposed that the driver of the Auto was rash and negligent. Therefore, there is

nothing on record to show that the deceased also contributed to the accident, in the facts and circumstances, the observation made by the Tribunal fixing negligence on the part of the driver of the Auto cannot be found fault with.

7. As far as the quantum of compensation is concerned, the Tribunal after considering all the aspects of the case, had awarded a just compensation of Rs.14,35,000/- together with interest at the rate of 7.5% per annum to the claimants and the same is upheld.

8. In the result,

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

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

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rka
To

The Motor Accident Claims Tribunal,
Subordinate Judge, Fast Track Court No.III,
Dharmapuri

copy to
The Section Officer
VR Section High Court
Madras

+1 cc to Mr.R.Sreevidhya Advocate sr95478

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