

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.471 of 2009
and M.P.No.1 of 2009

M/s.New India Assurance Co.Ltd.,
No.28, R.C.Street, Near Flower Market,
Coimbatore. ..Appellant/3rd Respondent

Vs.

1.Tmt.Magesh

2.Minor Varshni
rep.by her guardian and mother
Tmt.Magesh, the first respondent herein.

3.Ramathal

4.Palanisamy ..Respondents 1 to 4/Petitioners

5.M.Dakshinamoorthi ..5th Respondent/1st Respondent

6.M/s.A.R.C.Parcel Service (P) Ltd.,
Door No.504/2B, New Keerapalayam Village,
Pollachi Main Road,
Echanari, Coimbatore. ..6th Respondent/2nd Respondent

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 20.08.2008 made in MACTOP No.589
of 2004 on the file of the Motor Accidents Claims Tribunal
(Additional District and Sessions Court, Fast Track Court No.1)
at Coimbatore.

For Appellant : Mr.K.Padmanabhan

For Respondents : Mr.C.Veeraraghavan for
R1 to R3
No appearance for R4 to R6

JUDGMENT

The case in brief, is as follows:

On 08.11.2003 at about 10.00 p.m., the deceased P.Sivaraman
(husband of the first respondent), who was working in

M/s.Sunshine Enterprises Pvt.Ltd., Chiniampalayam, Coimbatore, was returning from his office, riding his two-wheeler bearing Reg.No.TN-38-E-6529, proceeding from North to South Direction. When the vehicle reached the Railway Bridge located in the L&T Bye-Pass Road, the lorry bearing Reg.No.TN-37-V-7407, belonging to the sixth respondent, driven by its driver in a rash and negligent manner, came from the same direction and dashed against the two-wheeler which the deceased was riding, and fled away from the place of occurrence. Due to the said impact, the deceased sustained severe head injuries. He was admitted in the Kovai Medical College and Hospital, Coimbatore, where he had undergone intensive medical treatment, but he died in the hospital on 23.11.2003. The legal heirs of the deceased 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.10,97,750/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has submitted that the police were informed only after a delay of 14 days from the date of accident and even in the First Information Report, no vehicle number has been given and it was registered as a hit and run case only. Thereafter, a false case has been foisted on the driver of the lorry bearing Reg.No.TN-37-V-7407, alleging that he had caused the accident. The counsel vehemently submitted that when the criminal case filed against the driver of the lorry was closed as 'mistake of fact' and no categorical finding has been given in respect of involvement of the lorry insured with the appellant Insurance Company, the Tribunal ought not to have fastened the liability on the appellant Insurance Company. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the respondents 1 to 3 / claimants has submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation. He also submitted that the Tribunal has rightly fixed the liability on the part of the appellant Insurance Company, being the insurer of the lorry bearing Reg.No.TN-37-V-7407, which hit the deceased and fled away from the place of accident. Therefore, according to the learned counsel for the claimants, the judgment of the Tribunal does not require any interference in the hands of this Court.

5. Heard the learned counsel for the appellant Insurance Company and also the learned counsel for the claimants and perused the materials available on record carefully and meticulously.

6. Considering the materials and evidence available on record, the Tribunal found that P.W.1-Mahesh, wife of the deceased, is not the eye-witness to the accident. But, on considering the evidence of P.W.5-Ravikumar, who was stated to be the eye-witness to the accident, even though there were discrepancies in his statements, the Tribunal found that the basic information furnished by him are genuine. P.W.4-Ayyadurai is the toll collector, who was collecting toll charges from the drivers of the vehicles which passes through the toll. He deposed before the Tribunal that after the collection of toll charges, the details with regard to vehicles entered the toll and also the toll charges, will be fed into the computer. Accordingly, he analysed the details in the computer with regard to vehicles which passed through the toll from 09.30 p.m. to 10.29 p.m. on 08.11.2003 and produced the same, which is marked as Ex.P22. Pointing out to this, P.W.4 deposed that the lorry bearing Reg.No.TN-37-V-7407 had passed through the said road at 09.45 p.m. Taking all these materials and evidence into consideration, corroborated with Ex.P6-Rough Sketch and Exs.P4 and P5 - Motor Vehicle Inspection Reports, 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 bearing Reg.No.TN-37-V-7407.

7. The Sub-Inspector of Police of the Coimbatore City Traffic Investigation Wing, had filed a charge sheet under Ex.P2 before the Judicial Magistrate Court No.8, Coimbatore stating that the driver of the lorry bearing Reg.No.TN-37-V-7407 had caused the accident and the same has been taken on file in C.C.No.31 of 2004 by the Court. Subsequently, the driver has been acquitted on the benefit of doubt. But the Tribunal has observed that only upon considering the materials and evidence available before it, a final decision has to be taken as regards the negligence and further, in these types of cases, no importance can be shown for the delay in filing the First Information Report.

8. Considering the materials and evidence and also the facts and circumstances of the case, 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 bearing Reg.No.TN-37-V-7407. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

9. With regard to the quantum of compensation awarded by the Tribunal, the Tribunal relied upon the evidence of P.W.2-Daniel Sathyanathan, Manager of M/s. Sunshine Enterprises, where the deceased was working. P.W.2 deposed before the Tribunal that the deceased was working in the said company as Technical Assistant and he was earning a sum of Rs.6,250/- per month. Ex.P16 is the Salary Certificate. Accordingly, the Tribunal has taken the monthly income of the deceased at Rs.6,250/-, arrived at the annual income at Rs.75,000/-, adopted the multiplier of 18, deducted 1/3rd of the amount towards his personal expenses and arrived at the sum of Rs.9,00,000/- towards future loss of income. The Tribunal has also awarded a sum of Rs.20,000/- towards loss of love and affection, Rs.15,000/- towards loss of consortium, Rs.3,000/- towards funeral expenses, Rs.2,000/- towards transport charges and Rs.1,57,750/- towards medical expenses, based on Ex.P12-Medical Bill Series, which is an actual expenditure. Thus, the Tribunal awarded a total compensation of Rs.10,97,750/-. The Tribunal has rightly considered the materials and evidence, correctly assessed the income of the deceased, adopted the correct multiplier and arrived at Rs.9,00,000/- towards future loss of income. The amounts awarded by the Tribunal towards other heads are also very reasonable and hence the same are confirmed.

10. 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, 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, the major claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. The share of the minor, the second respondent herein, shall continue to be in the bank deposit, as ordered by the Tribunal, till she attains majority. The first respondent / mother of the minor is permitted to withdraw interest directly from the bank once in three months, which shall be used for the benefit and welfare of the minor.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

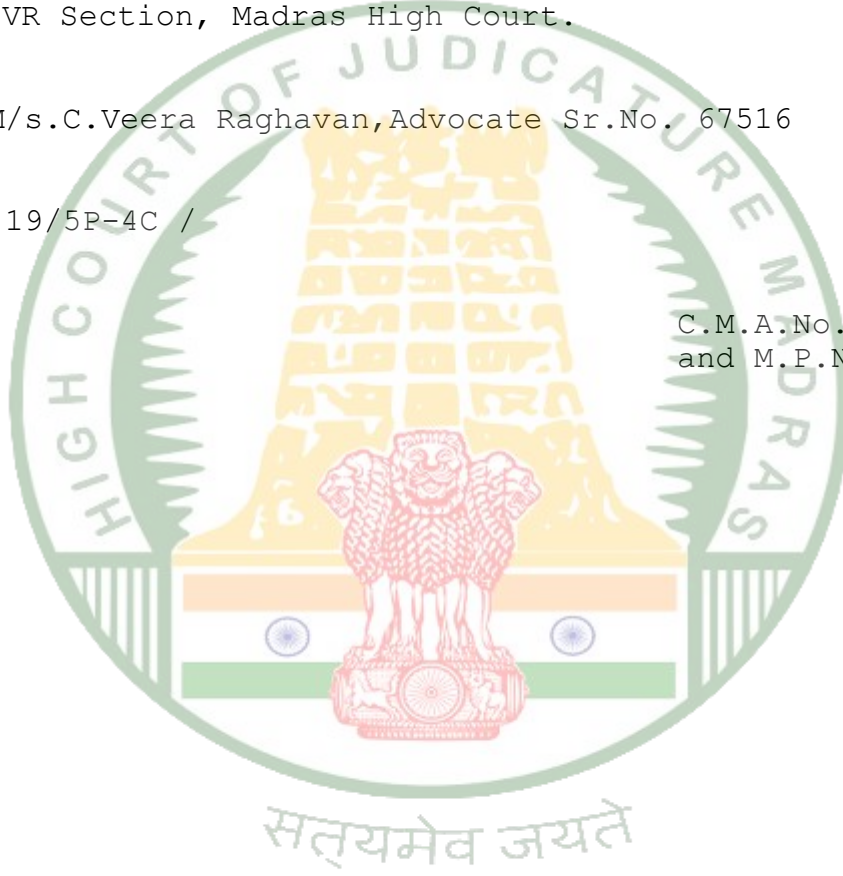
The Motor Accidents Claims Tribunal
(Additional District and Sessions Court,
Fast Track Court No.1) at Coimbatore.

Copy to:- The Section Officer,
VR Section, Madras High Court.

+1 cc to M/s.C.Veera Raghavan, Advocate Sr.No. 67516

AKM/28.11.19/5P-4C /

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