

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.472 of 2009

and

M.P.No.1 of 2009

M/s.National Insurance Company Ltd.,  
No.403, Mettur Road,  
Bhavani.

... Appellant/2<sup>nd</sup> Respondent

Vs.

Baby (died)

1.Shanmugam

2.T.M.Ramasamy

3.T.Muthumani

4.Cholamandalam General Insurance Co. Ltd.  
Door No.2, 2<sup>nd</sup> Floor,  
N.S.C. Bose Road,  
Chennai.

... Respondents/2<sup>nd</sup> Petitioner/  
Respondents 1, 3 & 4

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.11.2007 in M.C.O.P.No.10 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Pollachi.

For Appellant : Mr.S.Vadivel

For R4 : Mr.N.Vijayaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company, assailing the award dated 07.11.2007, passed by the 'Motor Accident Claims Tribunal (Subordinate Court), Pollachi' (hereinafter referred to as 'the Tribunal') in M.C.O.P.No.10 of 2005.

2.The case in brief is as follows:

On 22.12.2004, the deceased Murugesan was driving a mini door auto-rickshaw, in Pollachi to Trissur Road, from East to West direction. Two other members were also travelling along with him in the auto-rickshaw. At about

12.15 p.m., when they were nearing soya-beans factory, the driver of the lorry bearing Registration No.TN-28-V-6162, insured with the appellant herein, came from West to East direction in a rash and negligent manner and dashed against the mini door auto-rickshaw. Due to the collision, the occupants of the auto-rickshaw and the driver of the lorry sustained grievous injuries. They were taken to the Alwa Hospital, however, the drivers of both the vehicles succumbed to the injuries. The claimants/parents of the deceased Murugesan (driver of the mini door auto-rickshaw) filed a claim petition in M.C.O.P.No.10 of 2005, claiming a total compensation of Rs.15,00,000/- (Rupees fifteen lakhs only) before the Tribunal, which awarded a sum of Rs.3,67,000/- (Rupees three lakhs and sixty seven thousand only) with interest @ 7.5% p.a. from the date of filing of claim petition.

3. Aggrieved by the award, the appellant Insurance Company, who is the insurer of the lorry, has filed the instant appeal.

4. Learned counsel appearing for the appellant Insurance Company inter alia submitted that, the Tribunal failed to consider that the accident was a head-on collision and there is contributory negligence on the part of the driver of the mini door auto-rickshaw also. He further contended that the driver of the auto-rickshaw had allowed two passengers to travel along with him at the time of accident in the mini door auto-rickshaw, contravening the guidelines framed in the insurance policy and hence, the appellant Insurance Company is not liable to pay any compensation. In any event, the amount awarded by the Tribunal is excessive and exorbitant.

5. Per contra, learned counsel appearing for the 4<sup>th</sup> respondent Insurance Company (insurer of mini door auto-rickshaw) submitted that the Tribunal has rightly dismissed the claim petition against them and the finding of the Tribunal to that effect has to be confirmed.

6. Heard the learned counsel for the appellant and the learned counsel for the fourth respondent Insurance Company and perused the entire materials available on record.

7. One Karunakaran (P.W.3), an eye-witness to the accident, has deposed before the Tribunal that, on 22.12.2004, at about 12.15 p.m., when he was riding his motorcycle near Sakthi soya-beans Company in Pollachi to Trissur Main Road, from East to West direction, a mini door auto-rickshaw was going in front of him; the deceased Murugesan was driving the mini door auto-rickshaw; two load men were also travelling in the said auto-rickshaw; at that time, the lorry bearing Registration No.TN-28-V-6162 came from West to East direction in a rash and negligent manner and dashed against the mini door auto-rickshaw, iron fence on the left side of the road

and a palmirah tree; as a result, the persons who travelled in the auto-rickshaw and the driver of the lorry sustained injuries.

8.Taking note of the above and having regard to all the oral and documentary evidence, the Tribunal has rightly concluded that the accident had occurred only due to the negligence of the driver of the lorry, bearing Registration No.TN-28-V-6162, and accordingly fastened the liability on the 2<sup>nd</sup> respondent and the appellant, who are respectively the owner and insurer of the lorry, which, according to this Court, is perfectly correct.

9.With regard to the quantum of compensation, in the absence of any corroborative evidence to substantiate the income of the deceased, the Tribunal, on considering the evidence of the 3<sup>rd</sup> respondent (P.W.4)/owner of the mini door auto-rickshaw with regard to the earnings of the deceased and all other relevant exhibits on record, was of the view that the deceased was capable of earning Rs.4,000/- per month and awarded a sum of Rs.3,52,044/- towards pecuniary loss on account of death of the deceased, which, in the opinion of this Court, is fair, just and reasonable. Further, the Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses and Rs.10,000/- towards loss of love and affection, which are also fair, just and reasonable and hence, the same need not be interfered by this Court.

10.In the result, this Civil Miscellaneous Appeal is dismissed, confirming the judgment and decree dated 07.11.2007, passed by the Tribunal in M.C.O.P.No.10 of 2005. No costs. Consequently, connected Miscellaneous Petition is closed.

11.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 four weeks from the date of receipt of a copy of this judgment. It is seen that the mother of the deceased by name Baby, also died subsequently. Hence, on such deposit being made, the first respondent / claimant is permitted to withdraw the entire amount, on making proper application before the Tribunal.

Sd/-  
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,  
The Motor Accident Claims Tribunal  
Pollachi.

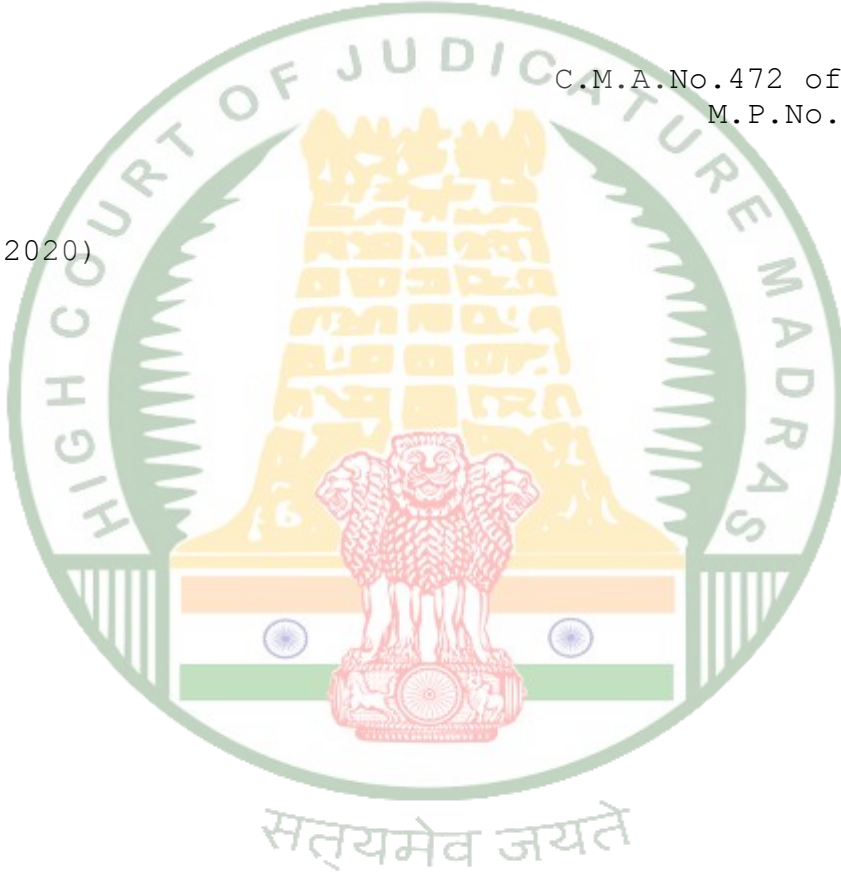
2.The Section Officer,  
VR Section, High Court of Madras.

+1cc to Mr.S.Vadivel, Advocate SR.No.62558

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.62920

C.M.A.No.472 of 2009 and  
M.P.No.1 of 2009

NMI (CO)  
GMY (16/06/2020)



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