

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.585 of 2009

The Branch Manager,  
National Insurance Company Limited,  
No.78, Thiruvengkataswamy Chetty Street,  
Erode. ... Appellant/2<sup>nd</sup> respondent

Vs.

1. Mangammal  
2. C. Madhappan  
3. C.Govindaraj  
4.C.Umamaheswari

...1 to 4 Respondents/1 to 4 Petitioners

5. R.Perumal ... Respondent/1<sup>st</sup> respondent  
(Fifth respondent set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.04.2008 made in MACT.O.P.No.93 of 2006 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.

For Appellant : Mrs.N.B.Surekha  
For R1 to R5 : No appearance

J U D G M E N T

This appeal is filed against the judgement and decree dated 02.04.2008 passed by the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri in MCOP.NO.93 of 2006.

2.The case in brief, is as follows:

On the fateful day, i.e., on 25.07.2005, at about 09.00pm, one Chinnasamy engaged the auto bearing Registration No.TN24/4650 to send off his son Madhappan, who was in military service. While the said auto was proceeding towards Jolarpet from his native village, due to the rash and negligent driving of the driver of the auto, the vehicle capsized on the road. As a result of the same, the said Chinnasamy succumbed to the injuries, besides other persons travelling in the said auto, sustained grievous injuries in all over the body. Stating that

the accident had occurred due to the rash and negligent driving of the driver of the auto, the legal heirs of the deceased Chinnasamy ie., wife, sons and daughter, filed a claim petition claiming a compensation of Rs.10,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,20,000/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant/ Insurance Company has preferred this appeal.

3.The learned counsel for the appellant Insurance Company submitted that the owner of the vehicle permitted the driver to carry five passengers in the auto in violation of the policy conditions and hence, the appellant insurance company is not liable to pay any compensation. She also submitted that the quantum of compensation awarded by the Tribunal is excessive and exorbitant.

4. Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously. Despite the service of notice and the name of the respondents/claimants having been printed in the cause list, there is no representation on their behalf.

5.There is no dispute with regard to the factum of accident and the manner in which the accident had occurred. Hence, the finding of the Tribunal that the accident took place due to the rash and negligent driving of the driver of the auto, is hereby confirmed.

6.It was put forth by the appellant insurance company before the Tribunal that more than 5 passengers had travelled in the auto bearing Regn.No.TN24/ 4650 as against the permitted capacity of 3 and hence, the owner and the driver have deliberately violated the policy condition. To substantiate the same, they placed reliance on Ex.P1 First Information Report. However, no one was examined to prove the contents of the FIR. Whereas on the side of the claimants, P.W.1/eyewitness to the occurrence, has clearly stated that at the time of accident, only three persons have travelled in the auto. Hence, the Tribunal, placing reliance on the evidence of P.W.1 as well as the observation of the Supreme Court in 2007(4) CTC 593 (National Insurance company Limited v. Anajana Shyam and others) that though the vehicle carrying more than permitted passengers, the compensation amount may be distributed for permitted capacity of members, has rightly fastened the liability on the appellant insurance company to pay compensation to the claimants, which finding this Court is not inclined to interfere.

7.As regards the quantum of compensation awarded by the Tribunal, P.W.1/wife of the deceased, in her evidence, deposed

that the deceased was aged about 50 years and was earning a sum of Rs.8,000/- per month by working in the Public Works Department. However, no proof was produced to substantiate the same. As such, the Tribunal has determined the monthly income of the deceased at Rs.3,000/- and after deducting 1/3rd towards personal expenses, arrived at the annual income at Rs.24,000/- and adopted the multiplier of 11 and quantified the compensation under the head "loss of income" at Rs.2,64,000/-. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and arrived at the said sum towards the contribution of the deceased to his family and hence, the same does not call for any interference by this Court.

8. That apart, the Tribunal has awarded Rs.40,000/- towards medical expenses, as per Ex.P7 medical bills, Rs.6,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium to the wife of the deceased, which, in the considered opinion of this Court, appears to be fair, just and reasonable, as the same has been quantified, after analysing the materials and evidence available on record and hence, the same need not be interfered.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The appellant-Insurance Company is directed to deposit the entire award amount along 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. On such deposit being made, the Tribunal shall transfer the same to the respective savings bank accounts of the respondents/claimants as per the ratio of apportionment made by the Tribunal, through RTGS within a period of one week thereafter.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,  
Motor Accident Claims Tribunal,  
Krishnagiri.

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

+1cc to Mr.N.B.Surekha, Advocate SR.No. 61613

C.M.A.No.585 of 2009

A.SK(27/07/2020)