

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.754 of 2009
and
M.P.No.1 of 2009

The Branch Manager,
Oriental Insurance Company Ltd.,
S.V.Complex, II Floor,
179, Easwaran Koil Street,
Pondicherry. Appellant/2nd Respondent

..vs..

1. Muniappa
2. Muthammal
3. Sarasammal (minor)
4. Prabha (minor) ...Respondents 1 to 4/Claimants 1 to 4
Minors, rep.by their father and
natural guardian, Muniappa
5. D.Seventh
(Fifth respondent set-exparte in the
lower Court. Hence Notice is dispensed
with) ...5th Respondent/Ist Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 14.08.2008 passed in M.C.O.P.No.2025 of 2003 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Krishnagiri.

For Appellant : Mr.R.Siva Kumar

For R1 & R2 : No appearance

For R5 : Exparte

J U D G M E N T

The case in brief, is as follows:

On 26.03.2002, at about 8.00 p.m., the deceased-Venkatesh and one Munusamy were standing near Ashok Leyland Plant II on the Hosur to Krishnagiri N.H.7 Main Road. At that time, the lorry bearing Reg.No.TN-55-A-4727 belonging to the fifth

respondent herein and insured with the appellant/insurance company came from Hosur side in a rash and negligent manner and dashed against the deceased and others. Due to the said impact, the deceased Venkatesh died on the spot. The legal representatives of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.5,00,000/- as compensation. Considering the materials and evidence available on record, 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 belonging to the fifth respondent and awarded a compensation of Rs.4,43,000/- 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 appeal.

3.Despite service of notice and the names of the respondents/claimants having been printed in the cause list, there is no representation on their behalf.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in coming to the conclusion that the accident had occurred due to the negligence on the part of the driver of the lorry. He also submitted that the compensation awarded by the Tribunal is excessive.

5.Heard the learned counsel for the appellant and perused the materials available on record.

6.The Tribunal, after narrating the facts, framing the issues and recording the evidence, has fixed the negligence on the driver of the lorry belonging to the fifth respondent herein and the appellant/insurance company herein. For fixing such a liability, the Tribunal has taken note of the fact that the petition filed by the Claimants before the Tribunal was under Section 163-A of the Motor Vehicles Act. Suffice to point out that if a petition is filed under Section 163 A of the Motor Vehicles Act, it is not necessary for the claimant(s) to establish any act of negligence on the part of the driver. Even, it is not necessary to plead that the death had occurred due to any wrongful act or neglect or default of the owner of the vehicle. Placing reliance on this, the Tribunal has fixed the liability on the fifth respondent and the appellant herein, which finding this Court is not inclined to interfere.

7.In the absence of any documentary proof for the monthly income, the Tribunal has taken the monthly income of the deceased at Rs.2,000/- as a mason, adopted the multiplier of 15 and arrived at the loss of dependency at Rs.3,60,000/-. Towards transportation expenses, love and affection, funeral expenses,

pain and suffering and mental agony, sums of Rs.3,000/-, Rs.50,000/-, Rs.5,000/- and Rs.5,000/- have been awarded. The Tribunal has also awarded a sum of Rs.10,000/- each to the minor respondents 3 and 4, towards representatives of the deceased. The said sums awarded by the Tribunal are based on documents and evidence produced and hence, interference is uncalled for.

8.In the result, the Civil Miscellaneous appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

9.The appellant / Insurance Company and the fifth respondent/ owner of the vehicle are directed to deposit the entire compensation amount, along with interest and costs, as ordered by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the major claimants are permitted to withdraw their respective shares, as apportioned by the Tribunal, on making proper application. The shares of the minor respondents 3 and 4 shall be deposited in a fixed deposit in any one of the Nationalised Banks, till they attain majority. The interest accrued in the bank deposit shall be withdrawn by the first respondent-father once in six months directly from the bank, which shall be utilised for the benefit and welfare of the minors.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Additional District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

+1cc to Mr.R.Sivakumar, Advocate Sr.63790

C.M.A.No.754 of 2009
& MP No.1 of 2009

srg 19/12/2020