

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.966 of 2009

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.106, Big Street,
Tiruvannamalai Town,
Tiruvannamalai.

... Appellant/2nd Respondent

vs.

1.Tmt.Lakshmi
2.Minor. Perumavathi
3.Minor. Sivasakthi
(2 & 3 are minors rep. by their mother and
next friend guardian Lakshmi)

4.Chinnapappa

5.Perumal Gounder ... Respondents 1 to 5/Petitioners 1 to 5

6.K.R.Kathar

... 6th Respondent/1st Respondent

(First respondent was set exparte before Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 18.08.2008 passed in MCOP.No.601 of 2005 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai.

Appellant : Mr.C.Ramesh Babu

Respondents : No appearance

JUDGMENT

The appellant, the Divisional Manager, New India Assurance Company Limited is the second respondent in MCOP.No.601 of 2005 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai. The respondents 1 to 5 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the death of one

Chinnathambi, husband of the 1st respondent, father of the respondents 2 and 3, son of the respondents 4 and 5 in a road accident on 04.02.2005.

2. The case of the claimants in nutshell is as follows:

On 04.02.2005 about 10.00 p.m, the deceased attempted to get into a van bearing Registration No. TN 32 4847 and at that time, the driver of the van suddenly started moving the vehicle without noticing the deceased boarding the van, as a result whereof, the deceased fell down from the van and sustained fatal injuries and died on the way to Hospital.

3. According to the claimants, the rash and negligent driving of the driver of the van bearing Registration No. TN 32 4847 belonging to the sixth respondent, was the cause of the accident and that since the said van was insured with the present appellant / New India Assurance Company Limited, the owner of the van and the insurer are jointly and severally liable to pay compensation.

4. The sixth respondent, owner of the van remained absent before the Tribunal and therefore, he was set ex-parte. The appellant / New India Assurance Company Limited contested the claim petition on all the grounds available to the insured and the learned District Judge / Motor Accidents Claims Tribunal, Tiruvannamalai after analysing the evidence on record, awarded a compensation of Rs.3,41,400/- together with interest at the rate of 7.5% per annum to the claimants. Aggrieved over the orders passed by the Tribunal, the appellant / New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.C.Ramesh Babu, learned counsel appearing for the appellant would contend that the van bearing Registration No. TN 32 4847 was not at all involved in the accident and this is also evident from the delay in registering F.I.R. by the Police.

6. No appearance on behalf of the respondents.

7. A perusal of the claim petition shows that the accident took place on 04.02.2005, at about 10.00 p.m and the deceased was rushed to the Hospital immediately. Subsequently, a complaint was preferred on 06.02.2005 at about 12.30 p.m. The anxiety of the petitioners to save the life of the deceased should be considered and the mere delay in lodging the FIR cannot be a ground to hold that the vehicle bearing Registration No. TN 32 4847 was not involved in the accident. Moreover, the police after completing investigation, laid a final report against the driver of the van.

8. It is also pertinent to point out that the owner of the vehicle did not contest the claim petition and in fact he remained absent before the Tribunal and was set exparte. There is absolutely nothing on record to show that the police with the connivance of the owner of the vehicle, had implicated the present appellant. I therefore, hold that the owner and the insurer of the van bearing Registration No. TN 32 4847 are jointly and severally liable to pay compensation.

9. As far as the quantum of compensation is concerned, the learned counsel appearing for the appellant did not advance any arguments. The Tribunal had awarded Rs.3,41,500/- together with interest at the rate of 7.5% per annum, considering all the aspects of the case and by no stretch of imagination, the award passed by the Tribunal can be said to be on the higher side. Therefore, the present appeal is liable to be dismissed.

10. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

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

(iii) The appellant / New India Assurance Company Limited as well as the sixth respondent are directed to deposit the compensation awarded by the Tribunal i.e., Rs.3,41,400/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.601 of 2005 on the file of the Motor Accident Claims Tribunal / District Court, Tiruvannamalai within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the respondents 1, 4 & 5 are permitted to withdraw their respective share from the award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalised Bank till they attain majority. The 1st respondent being the mother of the respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

The Motor Accidents Claims Tribunal,
The District Judge,
Tiruvannamalai.

Copy to
The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.C.Ramesh Babu, Advocate sr 90650.

CMA.No.966 of 2009

BS (CO)
SP (08/06/2020)



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