

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2378 of 2012

and

M.P.No.1 of 2012

The National Insurance Co. Ltd.,
Third Floor No.104, Bharat House,
Mumbai Samachar Merg,
Mumbai Maharashtra - 400 023. Appellant /2nd Respondent

Versus

1.Tmt. Pappayee1st Respondent/1st Petitioner

2.Thiru. Muthusamy2nd Respondent/2nd Petitioner

3.M/s. Rajputcarriers
Plot No.204, N.H. No.8,
Ranoli Vadodara District
Gujarat State - 391 3503rd Respondent/1st Respondent

4.Thiru. Sekar 4th Respondent/3rd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Decree and Judgment passed in M.C.O.P.No.90 of 2007 dated 23.05.2011 on the file of the learned Motor Accident Claims Tribunal (Additional District Judge) Dharmapuri - District.

For Appellant : M/s.J. Chandran

For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the Decree and Judgment passed in M.C.O.P.No.90 of 2007 dated 23.05.2011 on the file of the learned Motor Accident Claims Tribunal (Additional District Judge) Dharmapuri - District.

2. The Insurance company is the appellant herein. The first and second respondent are the parents of the deceased Kantha.

3. The brief facts of the case is as follows:

(i) The deceased Kantha @ Vijayantha was working in a jelly crusher unit at kolar, Karnataka state and was earning Rs.5,000/- per month approximately and he was the sole bread winner of the family.

(ii) On 30.10.2005 at about 4.00 a.m, when the deceased Kantha, was proceeding in a Auto bearing Registration No.MEW 8589 near I.O.C. Petrol Bunk on N.H.4 Road, Narasapuram, Kolar Taluk and District, a tanker lorry bearing Registration No.G.J.06-Z-5061 came in the opposite direction in a rash and negligent manner and hit against the auto, as a result of which he died on the spot itself.

(iii) Therefore, parents of the deceased who are the legal heirs of the deceased filed M.C.O.P.No.90 of 2007 on the file of (Additional District Judge) Dharmapuri seeking a sum of Rs.5,00,000/- as compensation.

4. Before the Tribunal it appears that the father of the deceased was examined as PW.1 and other two persons were examined as P.W.2 and 3 and Ex.1 to 7 were marked. On behalf of the Insurance Company RW-1 and 2 were examined.

5. Based upon the evidence of the Ex.P.1, First Information Report and Ex.P.2 post mortem report the Tribunal held that the rash and negligence driving on the part of the driver of the lorry and awarded Rs.3,77,000/- as compensation under the following heads:

S.No.	Particulars	Amount
1	Loss of Income	Rs.3,60,000/-
2	Love and affection	Rs.10,000/-
3	Funeral Expenses	Rs.5,000/-
4	Transport Expenses	Rs.2,000/-
	Total	Rs.3,77,000/-

6. Challenging the same the appellant has preferred this appeal.

7. The learned counsel for the appellant/Insurance Company states that the accident occurred solely due to the negligent act of the deceased and the liability fixed on them is liable to be quashed and prays to allow this appeal. Even though fresh notice was sent to the respondents through paper publication none appeared in person or through counsel.

8. The Insurance Company has taken a specific plea in the counter statement alleging that there was no parents to the deceased and the first and second respondent are not the real legal heirs of the deceased.

9. It is also seen from records that in respect of very same death of Kantha, the husband of the deceased namely one Sekar has moved the claim application before the 1st Additional Civil Judge, at Kolar, Karnataka state in MVC.No.1 of 2006 and the matter has been settled before the Lok Adalat and thereby awarded Rs.1,70,000/- which has already been deposited.

10. This Court is of the considered view that the Tribunal failed to appreciate the documents and evidence adduced before it and erroneously fixed the liability on the Insurance Company and hence the same is vacated. Since, in respect of the same accident, MCOP has filed and ordered and award amount is already deposited hence, another MCOP cannot be entertained.

11. In the result, this Civil Miscellaneous Appeal is allowed and the appellant/Insurance Company is exonerated from payment of the compensation as ordered by the Tribunal in M.C.O.P.No. 90 of 2007. The Insurance company is permitted to withdraw the amount already paid if any. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Additional District Judge, Dharmapuri - District.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.J.Chandran, Advocate Sr.32259

CMA.No.2378 of 2012
and
M.P.No.1 of 2012

ca[co]
srg 05/03/2020