

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.605 of 2011

National Insurance company Ltd.,
Branch Office,
No.7, Raja Street, Post Box.No.19,
Gobichettypalayam - 638 476,
Erode District.

... Appellant/2nd Respondent

Versus

1.K.Vagitha

2.Minor K.Kausalya

3.Minor K.Raghul

Minor its rep by Next friend

Mother K. Vagitha

..Respondents/Petitioners 1,2,3

4.C.V.Arun

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 26.08.2010 made in MACT.OP.No.211 of 2008 on the file of the Motor Accident Claims (Subordinate Court), Dharapuram.

For Appellant : Mrs.N.B.Surekha

For Respondents : Mr.M.A.P.Thangavel (for R1 to R3)

: No Appearance (for R4)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 26.08.2010 made in MACT.OP.No.211 of 2008 on the file of the Motor Accident Claims (Subordinate Court), Dharapuram for enhancement of compensation.

2.The respondents 1 to 3 herein are the claimants and they are the wife, daughter and son of the deceased Kumar & Kamarasen. The appellant herein/Insurance Company is the second respondent before the Tribunal.

3.The brief facts of the case is that on 21.07.2007 at about 10.30 am, the said Kumar @ Kumaresan was riding his Hero Honda Passion Plus Motorcycle bearing Regn.No.TN-37-AV-3909 from the East to West on the southern edge of the East-West, on the L & T Bye pass main road and at that time, the 4th respondent herein (owner-cum-driver), who had driven the Maruthi Omni van bearing Regn.No.TN-39-A-5667, which was insured with the appellants herein/Insurance company, in a rash and negligent manner and dashed against the Motorcycle of the said Kumar @ Kumaresan, as a result of which, he sustained grievous injuries. Immediately, he was taken to C.M.C Hospital, Coimbatore for treatment, wherein he was declared as brought dead. A case was registered by the Chettipalayam Police Station in Crime No.106 of 2007 under section 279, 304(A) of IPC against the driver of the said Mauruti omini van, which is now pending on the file of the Judicial Magistrate No.VII, Coimbatore. According to the claimants, at the time of the accident, the deceased Kumar @ Kumaresan was aged 37 years and was bearing a sum of Rs.12,000/-. For the death of the said Kumar @ Kumaresan, the claimants, who are his wife and children, have filed the claim petition before the Tribunal against the owner of the van and its insurer, claiming a sum of Rs.27,00,000/- as compensation.

4.The Insurance Company has opposed the claim petition by filing a detailed counter before the Tribunal.

5.In order to prove their case before the Tribunal, on the side of the claimants, the 1st claimant (wife of the deceased) examined herself as P.W.1 besides examining one Ravikumar (brother of the deceased) as P.W.2 and marked twelve documents as Ex.P.1 to Ex.P.12. On the side of the Insurance Company, the Development Officer one Venkatesan was examined as R.W.1 and four documents were marked as Ex.R1 to Ex.R4.

6.The Tribunal, after analysing the entire evidence adduced on either side, has come to the conclusion that the accident has occurred only due to the rash and negligent driving of the drive of the Maruthi Omni Van bearing Regn.No.TN-39A-5667 owned by the 4th respondent herein and insured with the appellant herein and thus, the Insurance Company is liable to pay the compensation. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.8,18,000/-. Aggrieved over the same, the present appeal has been filed by the Insurance Company.

7.I have heard the submissions made on either side and perused the materials available on record.

8. On perusal of the materials available on record, it is seen that the complaint was lodged before the Police, by the brother of the deceased viz., one Venkatesah, who was examined as P.W.2, based upon the complaint an FIR was marked as Ex.P.1. The report given by the Motor Vehicles Inspector was marked as Ex.P.2. The final report filed against the driver of the Omini Van was marked as Ex.P.4. On the basis of the evidence of P.W.2 and Ex.P.1 & P.4, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Omini van insured with the appellant/Insurance Company.

9. It is vehemently contended by the learned counsel appearing for the appellant/Insurance company that the driver-cum-owner has driven the said Omini Van by using LPG cylinder as well as Petrol, which was proved by the Motor Vehicle Inspector's report, Ex.P.2 and that it is a policy violation on the part of the driver of the Van. Furthermore, he submitted that the driver-cum-owner of the vehicle has failed to disclose the material fact that the vehicle was endorsed for dual fuel. Thus, according to the learned counsel for the Insurance Company, as there is a violation of the policy conditions by the owner of the vehicle, the appellant/Insurance company is not liable to pay compensation to the victims.

10. But, this Court is of the opinion, as contended by the learned counsel appearing for the claimants that it is the mistake committed by the appellant/Insurance company and without verifying the change made of engine of the vehicle, the licence was given by them. Moreover, the appellant/Insurance company has accepted the fact that the above said vehicle was insured with them at that time of accident. Therefore, the entire compensation amount has to be paid by the Insurance company is fairly reasonable.

11. After going through the entire conspectus of the case of the claimants/respondents, the Tribunal has correctly awarded the compensation to the respondents 1 to 3. It is seen that the deceased was aged 37 years at the time of accident and he was working in a lorry workshop along with his brother/P.W.2. Though there was no proper evidence for the income of the deceased, on the basis of the evidence of P.W.2, the Tribunal has fixed a sum of Rs.6,000/- as monthly income of the deceased and after deducting 1/3rd amount towards his personal expenses, the Tribunal has arrived at a sum of Rs.4,000/- as his contribution to the family. Thereafter, by applying the multiplier 16, on the basis of the age of the deceased, the Tribunal has awarded a sum of Rs.7,68,000/- (Rs.4,000 X 12 X 16) under the head of loss of income. That apart, the Tribunal has awarded under different heads and arrived at a total sum of Rs.8,18,000/- as

compensation. The break-up details of the compensation amount awarded by the Tribunal are as follows:-

Heads	Amount awarded by the Tribunal
Loss of Income	Rs.7,68,000/-
Loss of love and affection	Rs.20,000/-
Loss of consortium	Rs.10,000/-
Funeral expenses	Rs.10,000/-
Transportation charges	Rs.5,000/-
Damages	Rs.5,000/-
Total	Rs.8,18,000/-

12.Considering all the above materials placed before the Tribunal, I do not find any infirmity in the compensation amount awarded by the Tribunal. In the above circumstances, this Court is not inclined to interfere with the award passed by the Tribunal. Therefore, the award passed by the Tribunal is hereby confirmed.

13.It is represented by the learned counsel for the appellant/ Insurance Company that 50% of award amount as awarded by the Tribunal has already been deposited before the Tribunal. Hence, the Tribunal is directed to deposit the balance amount before the Tribunal with proportionate interest, as awarded by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is permitted to withdraw their share amounts with proportion interest by making necessary application before the Tribunal. So far as the share amounts of the minor claimants are concerned, the same shall be deposited in a fixed deposit in any one of the nationalised banks till minor attains majority and the mother/1st claimant is entitled to withdraw the interest accrued thereon once in three months.

14.Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

s/d-
Assistant Registrar (CS V)

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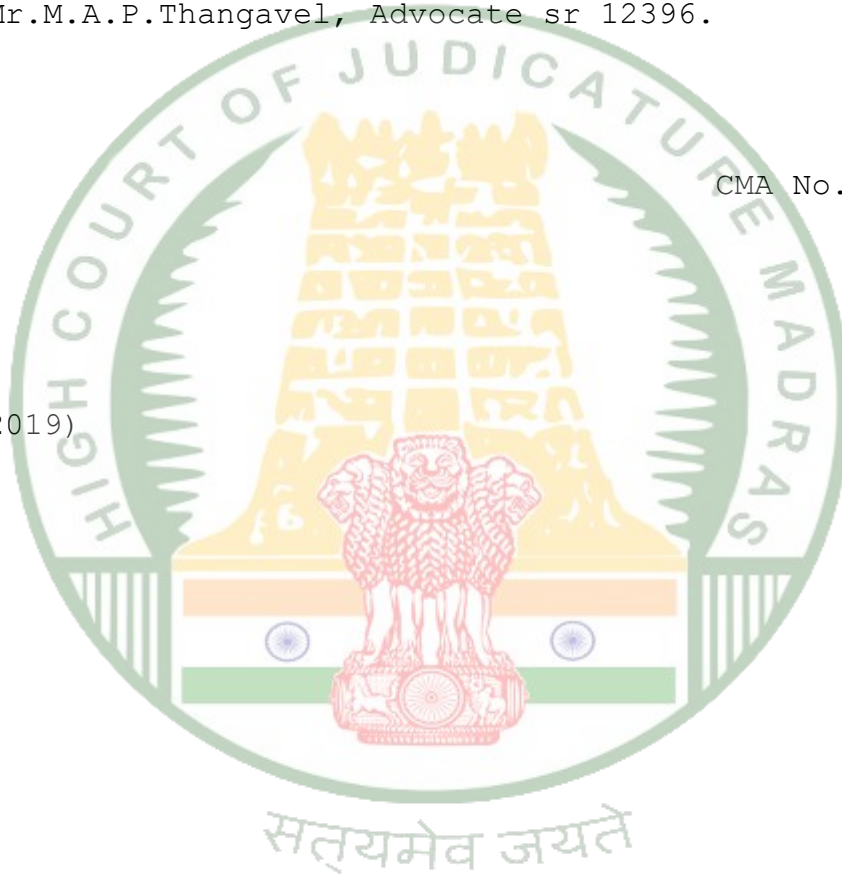
Sub-Assistant Registrar

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To

- 1.The Subordinate Judge
Motor Accident Claims Subordiante Court,
Dharapuram.
 2. The Section Officer,
V.R. Section, High Court, Madras - 104.
- +1 CC to Ms.N.B. Surekha, Advocate sr 11295.
+1 CC to Mr.M.A.P.Thangavel, Advocate sr 12396.

CMA No.605 of 2011

LN(CO)
SP(25/07/2019)



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