

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2597 of 2013

National Insurance Company Ltd,
By its Divl. Manager, No.157,
Karamadai Road,
Mettupalayam-641 301.

... Appellant/R 2

Vs.

1.Dhanushkodi Ammal ...RR 1 to 3/Petitioner 1 to 3

2.Maheswari

3.Subbu Lakshmi

4.P.Karuppusamy ...4th Respondent/R1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.07.2010 made in M.C.O.P.No.816 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional Sub Judge, Tirupur.

For Appellant : Mr.G.Udaya Sankar

For R1 to R3 : Mr.R.Bharath Kumar

R4 : No appearance - Notice served

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 08.07.2010 made in M.C.O.P.No. 816 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional Sub Judge, Tirupur.

2.The appellant is the second respondent in M.C.O.P.No. 816 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional Sub Judge, Tirupur. The respondents 1 to 3 filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Balasubramaniam, who died in an accident that took place on 26.10.2004.

3. According to the respondents 1 to 3, on 26.10.2004, at about 9 p.m., when the deceased Viz., Balasubramaniam was standing on the extreme left of the road in Kangayam road, Tirupur, a Maruthi Omni van bearing registration number TN 45 F 8769 came at a very high speed from east to west in a rash and negligent manner and dashed against Balasubramaniam. He was badly injured all over the body. Immediately he was admitted in Tirupur Government Hospital. After the first aid, he was referred to C.M.C. Hospital, Coimbatore. Despite best efforts, Balasubramaniam died on 27.10.2004 at about 9 a.m. Based on the above averments, the respondents 1 to 3 have filed the claim petition before the Motor Accidents Claims Tribunal, Additional Sub Judge, Tirupur, under Section 166 M.V. Act, claiming compensation of Rs.10,00,000/- and the same was taken on file in M.C.O.P.No.816 of 2006.

4. Before the Tribunal, during trial, in order to prove the case of the claimants, they have examined three witnesses and marked 6 documents Viz., Exs.P1 to P6. On the side of respondents, they have examined one witness and marked 1 document Viz., Ex.R1. The Tribunal, after hearing the arguments on either side and after considering the oral and documentary evidences, has come to the conclusion that the accident occurred only due to rash and negligent driving of the first respondent. The first respondent's van was insured with the second respondent Insurance Company. After considering the oral and documentary evidence, the tribunal has awarded a sum of Rs.3,09,000/- as compensation to the claimants with interest at the rate of 7.5% per annum from the date of petition till the date of realization.

5. Aggrieved by the said award dated 30.11.2011, the appellant Insurance Company has filed this appeal before this Court for reduction of the compensation.

6. The learned counsel appearing for the appellant-Insurance Company would submit that as per the post mortem report Ex.P2, the multiplier of '11' applied by the Tribunal is Correct. The Tribunal has failed to consider that the deceased was 54 years old and the award amount passed by the Tribunal is unfair. The award amount of a sum of Rs.2,64,000/- to the wife and children towards loss of income is very high. Therefore, the award amount passed by the Tribunal is unfair and prayed for setting aside the award of the tribunal.

7. The learned counsel appearing for the first respondent/claimant contended that the Tribunal after considering the materials on record awarded reasonable compensation and prayed for dismissal of the appeal.

8.Heard the learned counsels appearing for the appellant as well as the first respondent and perused the materials available on record.

9.Taking into consideration the facts and circumstances of the case, this Court is of the view that, the Tribunal ought not to have fixed the liability on the Insurance Company, on the ground that the driver of the van do not have any valid license and the compensation of Rs.3,09,900/- awarded by the Tribunal to the claimant fixing the liability on the Insurance Company is not proper. Therefore, only the owner of the van is liable to pay compensation to the claimants. The deceased being a watchman, appellant/Insurance Company is hereby directed to pay the compensation to the claimant and recover the same from the owner of the van in accordance with law.

10.In the result, the Civil Miscellaneous Appeal is allowed and the appellant-Insurance Company shall proceed against the owner of the van in accordance with law. The Judgement and Decree of the Tribunal remains unaltered in other respects. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The Additional Subordinate Judge,
The Motor Accidents Claims Tribunal,
Tirupur.

2.The Section Officer,
V.R.Section,
High Court, Madras. +2 Copies

+1cc to Mr.G.Udaya Sankar, Advocate SR.No.103465

+1cc to Mr.R.Bharath Kumar, Advocate SR.No.103948

C.M.A.No.2597 of 2013

EV (CO)
GMY (28/04/2021)