

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 676 of 2015
and M.P. No. 1 of 2015

M/s. National Insurance Co. Ltd.,
B.O.III, Thanthai Periyar Market Complex,
Near Old Bus Stand,
Salem.

.. Appellant/2nd Respondent

Vs.

1.Maheswari

2.Minor Kalaiarasi

3.Minor Kalaiselvi

4.Minor Kalaivani

5.Yasodha

...Respondents 1-5/
Petitioner 1-5

6.Subramanian

.. Respondent No.6/1st Respondent

(minor respondents 2 to 4 rep. By their mother
and natural guardian, 1st respondent)

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of Motor Vehicles Act, 1988, against the award
dated 27.07.2012, made in M.C.O.P.No.1296 of 2007, on the
file of the I Additional District Court, (Motor Accident
Claims Tribunal), Salem.

For Appellant : Mr.J.Chandran

For Respondents: Mr.V.Kumaravelan (for R1 to R5)

R6 : Not ready in Notice
Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 27.07.2012, made in M.C.O.P.No.1296 of 2007, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Salem.

2.The appellant is the 2nd respondent in M.C.O.P.No.1296 of 2007, on the file of the I Additional District Court, (Motor Accident Claims Tribunal), Salem. The respondents 1 to 5 who are the claimants filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Thiagarajan, who died in the accident that took place on 17.04.2006.

3.According to the respondents 1 to 5, on 17.04.2006, the deceased traveled in an Eicher van bearing Reg. No. TN 30 E 7088, belonging to the 6th respondent, as owner of the goods. The driver of the said van drove the vehicle in a rash and negligent manner and dashed against a tree and caused the accident. In the said accident, the deceased succumbed to injuries. The claimants who are the wife, children and mother of the deceased claimed a sum of Rs.20,00,000/- as compensation from the appellant as well as 6th respondent.

4.The 6th respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 5. The appellant contended that the accident occurred only due to rash and negligent driving of the vehicle coming in the opposite direction and not due to the driver of the van belonging to the 6th respondent. The owner as well as insurer of the said vehicle were not impleaded as necessary parties to the petition. The deceased was a Commission Agent of old machineries and he has not transported the goods as owner of the goods. The respondents 1 to 5 have falsely stated that the deceased traveled as owner of the goods, though he traveled only as a passenger. Hence, the appellant is not liable to pay compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, on behalf of the respondents 1 to 5, the 1st respondent examined herself as P.W.1, examined one eye-witness as P.W.2 and a relative of the deceased as P.W.3 and marked 7 documents as Exs.P1 to P7. The appellant

examined one T. Selladurai as R.W.1 and marked copy of the policy as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the van belonging to the 6th respondent and directed the appellant as well as the 6th respondent to jointly and severally pay a sum of Rs.5,86,969/- as compensation to the respondents 1 to 5.

8.Against the said award dated 27.07.2012, made in M.C.O.P.No.1296 of 2007, the appellant-Insurance Company has come out with the present appeal.

9.Learned counsel appearing for the appellant-Insurance Company contended that the respondents 1 to 5 have not mentioned in the claim petition that the deceased traveled in the van as owner of the stone pulverizing machine. The Tribunal ought to have rejected the evidence of P.W.3, being a relative of the deceased, who is an interested witness. There is nothing on record to show what happened to alleged stone pulverizing machine carried in the van. In any event, the accident occurred only due to negligence of the deceased. The Tribunal has awarded excessive amounts as compensation to the respondents 1 to 5 and prayed for setting aside the same.

10.Heard learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 5 and perused the materials available on record.

11.From the materials on record, it is seen that the respondents 1 to 5 who are the legal heirs of the deceased claimed compensation for the death of one Thiagarajan. In the claim petition, the respondents 1 to 5 have stated that the deceased was traveling as owner of the goods. The 1st respondent as P.W.1 has stated that her husband, the deceased purchased the Pulverizing Machine from Mysore and was traveling as owner of the goods in the cabin. The deceased informed the purchase of Pulverizing Machine to P.W.3, one of his relative and requested P.W.3 to inform the same to the 1st respondent. To substantiate the said contention, the respondents 1 to 5 examined P.W.3. Further, in the FIR marked as Ex.P1, it has been stated that the deceased was traveling in the offending vehicle as owner of Stone Pulverizing Machine. The appellant except examining R.W.1 who deposed that the deceased was traveling as gratuitous passenger, produced no material evidence to substantiate the same. The Tribunal considering the averments in the claim petition that

the deceased traveled as owner of goods and evidences of P.W.1 & P.W.3 & FIR, held that the deceased was not a gratuitous passenger and he traveled only as owner of goods. The said finding is not erroneous or perverse, warranting interference by this Court.

12.As far as the quantum of compensation is concerned, the Tribunal considering the nature of work, rightly fixed the notional income of the deceased, applied correct multiplier and awarded compensation. The total compensation awarded by the Tribunal is not excessive, warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.5,86,969/- along with interest and costs is confirmed. The learned counsel appearing for the appellant-Insurance Company submitted that the appellant has already deposited the entire award amount along with interest and costs. Therefore, the respondents 1 and 5/claimants 1 and 5 are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 2 to 4 are directed to be deposited in any one of the Nationalized Bank, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 to 4 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 to 4. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy// सत्यमेव जयते
Sub Assistant Registrar

gsa

To

1.The I Additional District Judge,
(Motor Accident Claims Tribunal),
Salem.

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

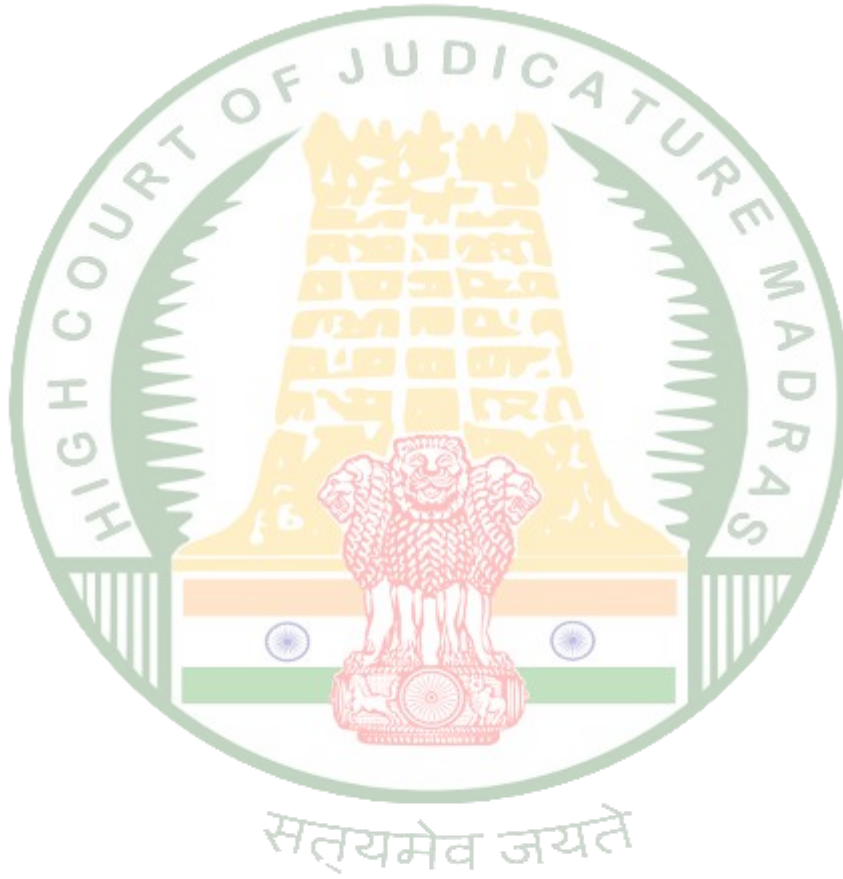
+1cc to Mr.V.Kumaravelan, Advocate, S.R.No.103253

+1cc to Mr.J.Chandran, Advocate, S.R.No.103336

C.M.A.No. 676 of 2015

SS (CO)

CB(27/08/2020)



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