

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.46 of 2009

and

M.P.No.1 of 2009

The National Insurance Company Limited
Sriram Sight Office,
2A, Prakasam Road,
T.Nagar, Chennai.

...Appellant/2nd Respondent

Vs

1.Raja
2.Minor Meenakshi
3.Minor Jothi
(Minors are represented by their father as
natural guardian and next friend)

...Respondents 1 to 3/Petitioners 1 to 3

4.T.G.Boopathy ...4th Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 30.06.2008 made in MCOP No.109 of
2007 on the file of the Motor Accidents Claims Tribunal,
Additional District and Fast Track Court No.4, Bhavani, Erode
District.

For Appellant : M/s.N.B.Surekha

For R1 to R3 : Mr.N.Manokaran

For R4 : No appearance

JUDGMENT

This appeal is preferred by the Insurance Company against
the award of a sum of Rs.4,68,000/- towards compensation to the
respondents 1 to 3 / claimants / legal heirs of the deceased
Pappathi, who died in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 27.09.2005, the deceased Pappathi
was sitting with her two children namely Vijay and Jai and

giving milk to one of them, in front of the temporary tent put up for the purpose of their business, viz., making and selling toys, in the Lakshmi Nagar Police Check Post. At that time, the 4th respondent drove the 407 Eicher Van bearing Registration No.TN-36-F-0698 in a rash and negligent manner and dashed against them, as a result of which the said Pappathi and her two children sustained fatal injuries and died on the spot. The legal heirs of the deceased filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.4,68,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in awarding a sum of Rs.4,32,000/- under the head 'pecuniary loss', without any acceptable evidence of proof of earnings. He further submitted that the multiplier of '18' fixed by the Tribunal is not correct.

5.Per contra, the learned counsel appearing for the contesting respondents 1 to 3 submitted that the Tribunal, after considering the oral and documentary evidence in a proper perspective, has rightly held that the accident had occurred due to the rash and negligent driving on the part of the driver of the van and has awarded the just compensation and hence, the same warrants no interference at the hands of this Court.

6.Heard both sides and perused the records.

7.The occurrence has not been disputed on the side of the appellant. What is disputed is the manner in which the accident had occurred. The appellant Insurance Company has not adduced any oral or documentary evidence to substantiate their claim that the driver of the van was not responsible for the accident. The Tribunal has placed reliance on Ex.P1-F.I.R, Ex.P2-observation mahazar, Ex.P3-rough sketch, Ex.P4-charge sheet, Exs.P5,P6,P7-postmortem reports of the deceased Papaathi and her two children, Ex.P8-M.V.I.report and the evidence of P.W2/Raman and rightly concluded that the accident had occurred due to the negligent act on the part of the driver of the van, which finding this Court is not inclined to interfere.

8.The Tribunal has awarded a sum of Rs.4,32,000/- towards loss of income, Rs.30,000/- towards loss of love and affection, Rs.5,000/- towards funeral expenses and Rs.1,000/- towards transport expenses. The Tribunal has relied upon the exhibits, evidence of witnesses and also taken note of the II Schedule of

the Motor Vehicles Act and all other aspects in a proper perspective and has awarded the above amounts under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards these heads are reasonable and justifiable and hence the same are confirmed.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The second respondent minor would have attained majority by now. Hence, on such deposit being made, the major claimants, ie., the first and second respondents are permitted to withdraw their respective shares on making proper application before the Tribunal. In respect of the share of the third respondent minor, the same shall be deposited in a fixed deposit in any one of the Nationalised Banks, till the minor attains majority. The interest accrued in the bank deposit shall be withdrawn by the first respondent-father of the minor, once in three months directly from the bank, which shall be utilised for the benefit and welfare of the minor.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Additional District and Fast Track Court No.4,
Bhavani,
Erode District.

2. The Section Officer,
VR Section, Madras High Court.

+1 CC to Ms.N.B. Surekha, Advocate sr 71253.
+1 Cc to Mr.N.Manokaran, Advocate sr 71688.

C.M.A.No.46 of 2009
and
M.P.No.1 of 2009

SJ(CO)
SP(24/07/2020)