

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
and  
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2841 of 2019

1.Vanitha, aged about 27 years  
Wife of Paramasivam

2.Annamalai aged about 63 years,  
Son of Ulaganathan

Jayamani, aged about 50 years (died)

3.Minor Ashvini, aged about 5 years,  
daughter of Paramasivam

4.Minor Sudharshan, aged about 1 years,  
Son of Paramasivam

Petitioners 3 and 4 are represented by  
guardian and next friend 1<sup>st</sup> petitioner  
all are residing at Devathanam Pettai Village,  
Gingee Taluk, Villupuram District.

.... Appellants

Vs

Paramasivam (Died)  
(deceased legal heirs)

1.Vanitha, aged about 27 years,  
Wife of Paramasivam

2.Annamalai, aged about 63 years,  
Son of Ulaganathan

Jayamani, aged about 50 years (died)  
Wife of Annamalai

3.Minor Ashvini, aged about 5 years  
daughter of Paramasivam

4.Minor Sudharshan, aged about 1 year  
Son of Paramasivam

(2<sup>nd</sup> respondent is guardian of minors 3 and 4)

1 to 4 are residing at Devathanam Pettai Village,  
Gingee Taluk, Villupuram District.

5.The Divisional Manager,  
National Insurance Company Ltd.,  
No.111, Nehru Street,  
Pondicherry.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicle Act, against the judgment and decree dated 12.12.2018 in M.C.O.P.No.353 of 2013 on the file of Motor Accident Claims Tribunal/Subordinate Judge, Gingee.

For Appellants :Mr.C.Thangaraju

For Respondents :Mr.J.Chandran (for R5)

#### J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the legal heirs of one Mr.Paramasivam, 29 years, who worked as a Promoter (Sales and Service) in Samsung Cell Company and earned Rs.15,000/- per month, who died in the accident occurred on 02.11.2013, when he was riding his two wheeler from Pondicherry towards Gingee and suddenly applied brake to avoid a major accident and unable to control the bike, dashed against an Iron Fence.

2.The claim petition was contested by the respondent/ Insurance Company stating that because of the rash and negligent driving of the owner, the accident occurred and therefore, he is not entitled to any compensation.

3.The trial Court accepted the contention of the Insurance Company that the deceased is a tortfeasor and therefore, the claimants are not entitled to any compensation. In paragraph 12 of the award, very categorically the Tribunal held that the claim made by the dependant of a tortfeasor who is not a third party is not maintainable either under Section 166 or 163A of the Motor Vehicles Act. However, the Tribunal erroneously held that the claim under personal coverage is not maintainable before the Tribunal, when there is a contract between the deceased and the Insurance Company for personal coverage. When the Tribunal denied relief either under Section 166 or 163 A of Motor Vehicles Act, it should have granted personal accident claim amount which was erroneously declined. Therefore, there shall be a direction to the Insurance Company to pay a sum of Rs.1,00,000/- as the policy taken by the deceased is for Rs.1,00,000/- towards personal accident claim along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

4.The claimants/appellants are directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, If the requisite

court-fee is not paid by the claimants, the Tribunal is directed to deduct the requisite court fee from the compensation awarded to the claimants and thereafter, transfer the remaining award amount.

5.The Insurance company is directed to deposit the entire award amount along with interest as per the award passed by this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the entire amount along with interest to the personal bank account of the 1<sup>st</sup> appellant/claimant through RTGS within a period of one week thereon.

6.Accordingly, this appeal is partly allowed, awarding a sum of Rs.1,00,000/- with interest. No costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

sai

To

The Subordinate Judge,  
Motor Accident Claims Tribunal,  
Gingee.

+2cc to Mr.C.Thangaraju, Advocate, S.R.No. 60315  
+1cc to Mr.J.Chandran, Advocate, S.R.No. 61359

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C.M.A.No.2841 of 2019

SS(CO)  
GN(17/03/2020)

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