

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.539 of 2014
and

M.P.No.1 of 2014

National Insurance Company Ltd.,
Nehru Street,
Pondicherry..Appellant/2nd Respondent

Vs.

1. Jaya
2. Minor Manimaran
3. Minor Magendran

**(Minors 2 and 3 are rep.by their
1st Respondent as natural Guardian)**

4. Amirtham(Died)
5. Chithiraikani

..Respondents/Claimants

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the Judgment and Decree dated 08.08.2011 passed in M.A.C.T.O.P.No.358 of 2009 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Court), Vridhachalam.

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

For Respondents : Served

No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 08.08.2011 passed in M.A.C.T.O.P.No.358 of 2009 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Court), Vridhachalam.

2. It is the case of the appellant that on 09.10.2009 at about 19.30 hours, One Mr.Kuppusamy (deceased) who was a Loadman was travelling on the Pennadam to Karuveppilang kurichi road at Sathiyavedi near EB office turning in the fifth respondent's Lorry bearing Registration No.TN-46-C-7651 loaded with empty bottles and old iron waste. At the time, when the driver of the

lorry applied sudden break in order to avoid hit the pigs which were crossing the road, the Kuppusamy who was sitting on the load fell down and died on the spot itself, sustaining fatal injuries. Since the fifth respondent is the owner of the lorry and the appellant is the insurer of the same, the dependants of the deceased, respondents 1 to 4 herein, have filed a Claim Petition before the Motor Accident Claims Tribunal (Additional Subordinate Court, Vridhachalam, against them, claiming Rs.9,00,000/- as compensation under various heads.

3. Denying the allegations of the claimants, the appellant insurance company filed a counter affidavit before the Tribunal, submitting that the deceased had travelled in the lorry only as an unauthorised passenger and not as a Loadman. Further, he fallen down from the lorry only due to the careless and negligent sitting on the top of the heavy load containing empty bottle and waste irons, and not due to careless and negligent driving of the fifth respondent's lorry driver, and therefore, they are not liable to pay any compensation to the claimants. Hence, sought for dismissal of the petition with costs.

4. During the trial before the Tribunal, on the side of the claimants, the first respondent herself examined as P.W.1 and filed certain documents, they are as follows:-

- Ex.1 : Copy of the F.I.R. Report
- Ex.2 : Copy of the Motor Vehicle Inspection Report
- Ex.3 : Postmortem Report
- Ex.4 : Copy of the Final Report
- Ex.5 : Certified copy of the Insurance
- Ex.6 : License of one Aarthi
- Ex.7 : Copy of the Ration Card

One Mr.Gurusamy was examined as P.W.2 on the side of the claimants. On the side of the respondents, One Mr.Pitchai Muthu was examined as R.W.1 and no documents were filed.

5. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimants and awarded Rs.4,01,000/- as compensation to the claimants. Aggrieved by the award, the appellant insurance company has filed this appeal before this Court.

6. On perusal of the award dated 08.08.2011 passed by the Motor Accident Claims Tribunal (Additional Subordinate Court), Vridhachalam, it is seen that the accident has not been disputed, and only the cause of accident, i.e. Whether the deceased was sitting on the top of the goods carried or the

driver of the lorry loaded much goods and driven the lorry in a rash and negligent manner, was disputed. Though it was not proved before the Tribunal that the deceased had died only due to the rash and negligent driving of the fifth respondent's lorry driver, it was found from the documents that the deceased had travelled in the fifth respondent's lorry on the day of accident, and as a Loadman he had taken insurance for him in the appellant insurance company before he died, and therefore, the Tribunal has come to the conclusion that the appellant insurance company are liable to compensate the claimants for the death of the Kuppusamy.

7. As far as quantum of compensation is concerned, though it was stated by the Claimants that the deceased had earned Rs.7,500/- per month, no evidence has been produced to prove the same. Therefore, the Tribunal has fixed the monthly income of the deceased as Rs.3,000/- under the Minimum Wages Act. Since the fourth respondent who is the mother of the deceased had died during the pendency of the petition and the dependants are only 3, the Tribunal has taken $\frac{2}{3}$ rd of the income i.e. Rs.2,000/- for family expenses of the deceased and $\frac{1}{3}$ rd of the income i.e. Rs.1,000/- for personal expenses of the deceased. As per which, the annual income of the deceased was fixed as Rs.24,000/- (2000 x 12). Since the deceased was aged 43 years at the time of accident, the Tribunal has taken the appropriate multiplier 14 and awarded Rs.3,36,000/- (24000 x 12) as compensation towards Loss of Income of the claimants. The compensation awarded under the other heads i.e. Rs.5,000/- for Funeral Expenses, Rs.30,000/- for Loss of Love and Affection, Rs.25,000/- for Loss of Consortium, and Rs.5,000/- for Ambulance, are meagre and not excessive.

8. In view of the above, this Court do not find any error in the award dated 08.08.2011 passed by the Tribunal in M.A.C.T.O.P.No.358 of 2009. Hence, this Court is not inclined to interfere with the same.

9. In the result, the Civil Miscellaneous Appeal is dismissed and a sum of Rs.4,01,000/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants is hereby confirmed. The appellant insurance company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent/wife, and the second and third respondent/children who become major are permitted to withdraw their respective shares as determined by the Tribunal along with interest and

costs, less the amount, if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(Additional Subordinate Court),
Vridhachalam.

+1 cc to M/s.N.B.Surekha, Advocate Sr.No. 51385

AKM/03.02.2020/4P-3C /

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