

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3133 of 2018

and

C.M.P.No.23768 of 2018

National Insurance Company Ltd.,
Branch Office, 1st Floor,
135-1, Rose Building Main Road,
Kovilpatti, Tuticorin - 628 501. Appellant/2nd Respondent

Vs.

1.Pappathi
2.M.Palanisamy1 & 2 Respondents/Petitioner
3.S.Praveenkumar3rd Respondent /
Driver cum Owner/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.12.2017 made in M.C.O.P.No.13 of 2017 on the file of the learned Special District Judge (Motor Accident Claims Tribunal), Erode District.

For Appellant : Mr.J.Chandran

For Respondents 1 & 2 : Mr.R.Nalliyappan

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 22.12.2017 made in M.C.O.P.No.13 of 2017 on the file of the learned Special District Judge (Motor Accident Claims Tribunal), Erode District.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The respondents 1 & 2 are the claimants in M.C.O.P.No.13 of 2017 on the file of the learned Special District Judge (Motor Accident Claims Tribunal), Erode District. They have filed the above claim petition claiming a sum of Rs.20,00,000/- as

compensation for the death of one P.Bharanitharan, who died in the accident that took place on 07.09.2016. 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 Tempo belonging to the third respondent and as the insurer, the appellant is liable to pay the compensation to respondents 1 & 2 and awarded a sum of Rs.18,90,875/- as compensation to them. Against the said award dated 22.12.2017 made in M.C.O.P.No.13 of 2017, the appellant/Insurance Company has come out with the present appeal challenging the liability as well as quantum of compensation awarded by the Tribunal.

4.The learned counsel appearing for the appellant contended that the total amount of compensation awarded by the Tribunal is excessive. The Tribunal failed to see that the accident occurred only due to rash and negligent driving by the deceased, who came from a cut road and dashed against the lorry in the main road. The third respondent is not the driver of the lorry at the time of the accident. He was falsely implicated by the police as the driver of the lorry run away from the scene of accident fearing the general public. The driver of the lorry did not have any valid driving licence and did not have badge endorsement to drive a transport vehicle. The notional income of Rs.12,000/- fixed by the Tribunal and additional 40% towards future prospects are excessive and not correct and prayed for setting aside the award of the Tribunal and allowing the appeal.

5.Per contra, the learned counsel appearing for the respondents 1 and 2/caveator contended that the respondents 1 & 2 have examined PW2, who was the pillion rider and the claimant in M.C.O.P.No.671 of 2017, to prove the negligence on the part of the driver of the lorry. The Tribunal by giving valid reasons rejected the evidence of the third respondent as RW.1 who deposed that the accident occurred only due to rash and negligent driving by the deceased. The deceased was a B.Sc. Computer Science student and was brilliant in English language and his studies and participated in extracurricular activities. The respondents 1 & 2 have produced the documents to substantiate the same. The amount fixed by the Tribunal as notional income of the deceased and other amounts granted by the Tribunal are not excessive and prayed for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 & 2 and perused the materials available on record.

7.From the materials available on record, it is seen that PW.2 is the pillion rider in the Scooty driven by the deceased

at the time of the accident and he deposed that the accident occurred only due to rash and negligent driving by the driver of the lorry. The third respondent as RW.1 deposed that the accident occurred due to rash and negligent driving by the deceased as he came from a cut road and dashed against the lorry. According to the third respondent, he was coming behind the offending lorry in another two wheeler. The Tribunal rejected the evidence of the third respondent on the ground that his vision would have been blocked by offending vehicle moving in front of his vehicle and he cannot certainly say as to how the accident had occurred. The Tribunal accepted the evidence of PW.2, who was the pillion rider at the time of the accident in preference to evidence of RW.1. There is no error in the finding of the Tribunal holding that the driver of the lorry is negligent and responsible for the accident. As far as the quantum of compensation is concerned, the Tribunal, considering the documents produced by the respondents 1 and 2, fixed notional income of the deceased at Rs.12,000/- per month and granted 40% enhancement for future prospects and after deducting 50% and applying multiplier awarded compensation for loss of income and amounts awarded under different heads are not excessive and they are just and reasonable.

8. In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal 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, the respondents 1 and 2 / claimants are permitted to withdraw their share of the award amount along with interest and costs, as per the apportionment fixed by the Tribunal, less the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

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-s/d-

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To

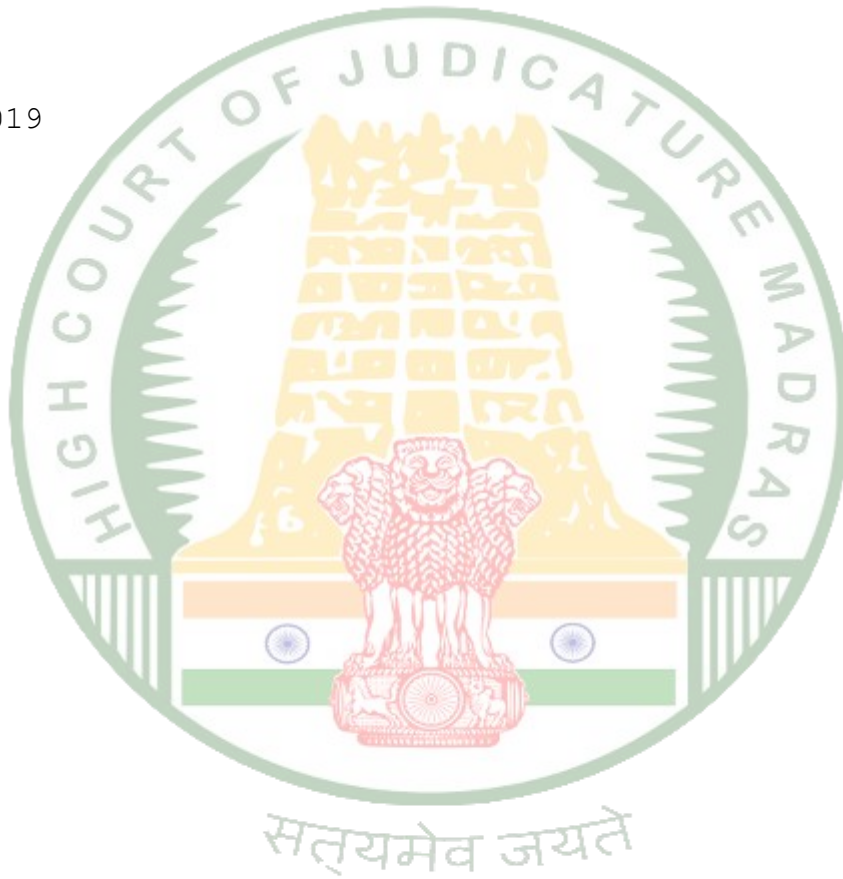
1. The Special District Judge (Motor Accidents Claims Tribunal),
Erode District.

2.The Record Keeper,
V.R.Section,
High Court,
Chennai.

+1 cc to Mr.R.Nalliyappan Advocate sr3750
+1 cc to Mr.J.Chandran Advocate sr3666

C.M.A.No.3133 of 2018
and
C.M.P.No.23762 of 2018

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