

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.08.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.564 of 2014 and
M.P.No.1 of 2014

The Divisional Manager,
United India Insurance Co. Ltd.,
Pondicherry

.... Appellant/2nd Respondent
Vs.

1. Anandhi
2. Vijay
3. Gowthaman
- 4.Sivagangai
- 5.Aswathamam

... Respondents/5th Respondent
...5th Respondent/1st Respondent

(5th Respondent remained exparte in the Lower Court and
therefore notice may be dispensed with)

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree in M.C.O.P.No.1044 of 2007 dated 28.10.2013 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Puducherry.

For Appellant : Ms.R.Rathna Thara
For R1 to R4 : Mr.R.Sreedhar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree in M.C.O.P.No.1044 of 2007 dated 28.10.2013 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Puducherry.

2. The case of the appellant is that on 04.02.2005, at about 19.00 hrs, one Gunasekaran was riding the motor cycle, the husband of the 1st appellant [deceased] was the pillion rider and they were travelling from Panruti to Melpattampakkam for business purpose. When they were nearing the Bismillah Rice Mill, Melpattampakkam, the tractor along with two trailers bearing registration Nos.TN-46-0093 and TN-25-2032 and TN-32-Z-1348 [insured with the appellant-Insurance company] came from West to East in a rash and negligent manner and dashed against the Motor cycle, in which the deceased sustained fatal injuries. Immediately, he was taken to the Government General Hospital,

Cuddalore, but, he succumbed to the injuries on 05.02.2005. Prior to the accident, he was working as a coolie and earning Rs.150/- as daily income. Since he died in the accident, his wife, children and his mother had filed a Claim Petition in M.C.O.P.No.1044 of 2007 under Section 166(1) (a) of Motor Vehicles Act, claiming Rs.4,00,000/- as compensation under various heads, before the Motor Accidents Claims Tribunal, II Additional District Judge, Puducherry.

3. Denying the averments of the claimants, the appellant-Insurance Company filed a counter affidavit before the Tribunal, wherein, it has been submitted that the claimants have not produced any document to prove the age and monthly income of the deceased, and they have also not produced any documentary evidence to prove their relationship with the deceased. Further, it has been submitted that the accident happened only due to the negligence of the deceased and there is no fault on the part of the driver of the Tractor. Hence, they sought for dismissal of the petition filed by the claimants.

4. During the trial before the Tribunal, on the side of the claimants, the 1st respondent was examined as P.W.1 and one Mr.Mani, witness to the occurrence, was examined as P.W.2 and Exs.P.1 to P.8 were marked. On the side of the respondents, one Venkatraman, driver of the tractor was examined as R.W.1 and one Selvaraj, staff of the Insurance Company was examined as R.W.2 and Exs.R1 and R2 were marked.

5. The Tribunal, after considering the oral and documentary evidences, has come to the conclusion that the accident occurred only due to negligence of the driver of the 1st respondent. As the 1st respondent's tractor was insured with the appellant-insurance company, the Tribunal held that the appellant-insurance company is liable to compensate the claimants. The claimants have not produced any proof before the Tribunal to prove that the deceased had earned Rs.150/- per day. Since he is a coolie, considering the fact that there may not be any salary certificate to prove the income, the Tribunal has rightly come to the conclusion that the deceased would have earned Rs.4,500/- per month, out of which 1/3rd of the amount, he would have spent for his personal expenses and remaining amount, he would have given to his family, thereby the Tribunal has fixed the annual income of the deceased as Rs.6,12,000/- and has calculated the same with the multiplication of '17', considering the age of the deceased, who was at the age of 32 at the time of accident. Besides, the Tribunal has awarded Rs.20,000/- to the 1st respondent, as she has lost her husband. Moreover, the Tribunal has awarded Rs.5,000/- towards Funeral Expenses, Rs.20,000/-, towards loss of Love and Affection and Rs.2,500/- towards Loss of Estate. In total, the Tribunal has awarded a sum

of Rs.6,60,000/-, as compensation to the claimants with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Aggrieved by the award, the appellant/Insurance Company has filed the present appeal before this Court.

6. The learned counsel for the appellant/Insurance Company would submit that there is negligence only on the part of the deceased and that the Insurance company of the two wheeler is not made as party, further, the driver of the tractor also was not having valid driving licence, hence there is violation of policy.

7. Though it has been stated by the learned counsel for the appellant/Insurance Company that the Tribunal, without any basis, has fixed the basic salary of the deceased, they have not produced any document or brought any witnesses to that effect to refute the same. Further, there is no other material to show that the rider of the bike was at fault and apart from that, copy of the sketch was produced, however, in the sketch also, it is not clear as to the exact place where the accident had taken place and it only shows 'X' mark as the accident site. When the respondent has not proved that there was no fault on their part and not proved that the negligence was on part of the deceased, the Tribunal has rightly decided the issue and this Court is not inclined to interfere with the award passed by the Tribunal.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed and the Judgment dated 28.10.2013 passed by the Tribunal in M.A.C.T.O.P.No.1044 of 2007 is confirmed. The appellant / Insurance Company is directed to deposit the entire award amount to the Credit of M.A.C.T.O.P.No.1044 of 2007 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Puducherry, along with interest and costs as determined by this Court, 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 claimants are permitted to withdraw the amount [as per the apportionment made by the Tribunal], less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. Consequently, connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

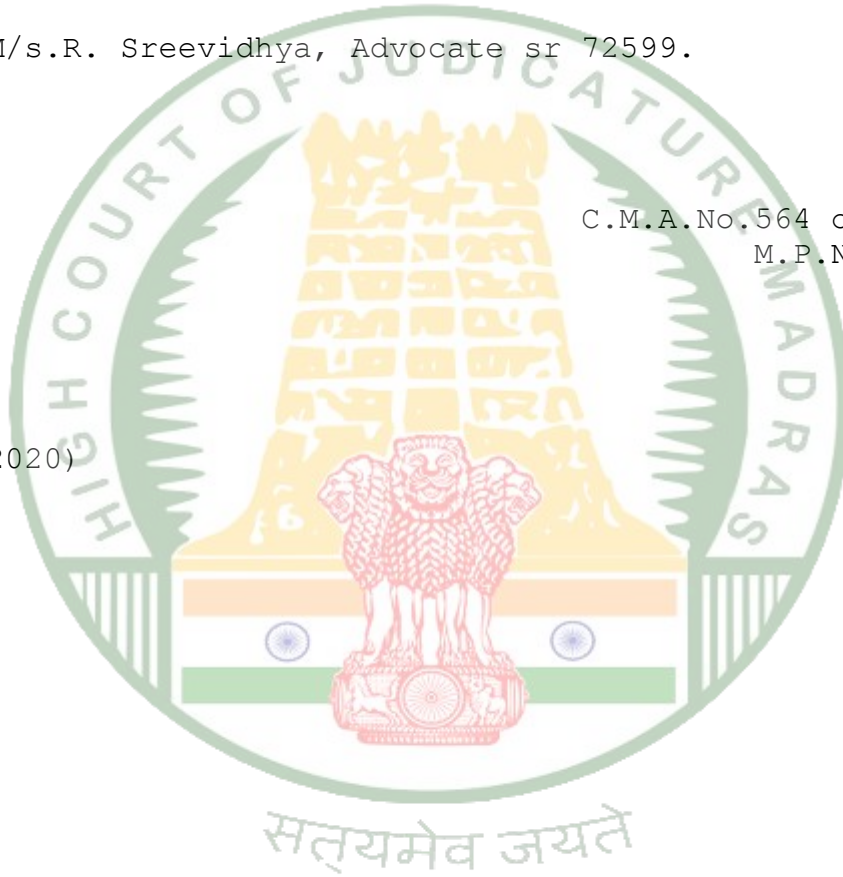
1.The II Additional District Judge
Motor Accident Claims Tribunal
Puducherry

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

+1 CC to M/s.R. Sreevidhya, Advocate sr 72599.

C.M.A.No.564 of 2014 and
M.P.No.1 of 2014

VGII(CO)
SP(06/02/2020)



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