



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

C.M.A(MD) No.1150 of 2018

and

C.M.P(MD) No.11842 of 2018

National Insurance Co.Ltd.,
through its Divisional Manager,
No.3, North Veli St., II Floor,
Near Sethupathi High School,
Madurai - 625 001.

: Appellant/Second respondent

Vs.

1.Lakshmi

2.Minor Arthy

3.Minor Santhosh KumarRespondents/Petitioners

4.I.Ajmeer Raja ...Respondent/Respondent No.1

5.Ammavasai

6.Marathy ...Respondents/Respondent Nos.3 and 4

minors 2 and 3 are represented
by their next friend & guardian
mother Lakshmi/first respondent

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed by the Motor Accidental Claims Tribunal cum Special District Judge, (MCOP cases) in charge, madurai made in M.C.O.P.No.229 of 2015 dated 27.11.2017.

For Appellant : Mr.R.Rajamani

For R1 to R3 : Mr.T.Sivananthan

For R4 : Mr.S.Malaikani

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed to set aside the judgment dated 27.11.2017 passed in M.C.O.P.No.229 of 2015 by the Motor Accidental Claims Tribunal cum Special District Judge, (MCOP cases), in charge, Madurai.

2.The brief facts of the case are as follows:

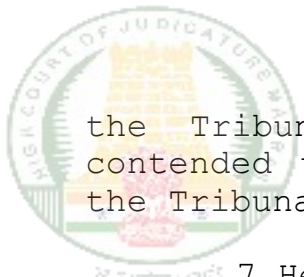
On 24.02.2015 at about 16.30 hours, when the deceased Viz., A.Malaiappan was riding in his two wheeler bearing Reg.No.TN 59 AW 3431 at Sakkudi to Poovandhi Road near Sakkudi bridge wall. At that time, a two wheeler bearing Reg.No.TN 63 AB 3616 TVS Star City owned by the first respondent come from the same direction in a rash and negligent manner and hit against the deceased Malaiappan's two wheeler, due to which, the deceased sustained multiple injuries. Immediately, he was taken to the Government Rajaji Hospital, Madurai, but he died on the way to Hospital. Hence, a claim petition has been filed by the claimants seeking for compensation before the trial Court.

3.Before the Tribunal, the case of the claimants was resisted by the appellant herein/Insurance Company by filing a counter statement. According to the appellant, due to the negligent act of the deceased, the accident had taken place and hence, he is not liable to pay compensation. He has further stated that it is for the claimants to establish the age, occupation and income of the deceased. In the absence of the same, the appellant herein/Insurance Company prayed for the dismissal of the claim petition.

4.Before the Tribunal, on the side of the claimants, two witnesses were examined as P.Ws.,1 and 2, eight documents were marked as Exs.P1 to P8 and one material object was marked as MO.1 and on the side of the respondents, two witnesses were examined as D.Ws1 and 2 and nine documents were marked as Ex.D1 to Ex.D9.

5.After considering the oral and documentary evidence, the Tribunal has held that there is also a negligent on the part of the deceased, the Tribunal directed the respondents 1 and 2 therein to pay the compensation of Rs.11,45,977/- with 7.5% interest per annum, jointly or severally. Against which, the present appeal is filed by the appellant /Insurance Company to set aside the order of the Tribunal.

6.In the grounds of appeal, the appellant/Insurance Company has stated that the deceased was not having a valid driving licence at the time of accident and hence, there is a violation of policy condition. Further, he stated that the claimants have not produced any evidence or documents to prove that the deceased was earning a sum of Rs.20,000/- per month. Further, the appellant has stated that the fixation of the monthly income of the deceased at Rs.7,500/- and allowed 25% income for his future prospectus and allowed a total compensation of Rs.11,81,208/-, which were made by



the Tribunal are highly excessive. Therefore, the appellant contended that he is not liable to pay compensation as awarded by the Tribunal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 4.

8. The learned counsel for the appellant contended that the deceased, who was driving the vehicle, has no valid license at the time of accident, since the vehicle was insured, which is also revealed in the Motor Vehicle Report. He further argued that the accident occurred only due to the rash and negligent driving on the part of the deceased, who was riding the said vehicle. Since the Tribunal has considered the said aspect, fixed the liability on the appellant and the fourth respondent herein.

9. The learned counsel appearing for the claimants contended that when the deceased was working as Driver cum Owner, he was earning a sum of Rs.20,000/- per month and the income determined by the Tribunal is very much meagre. Further, the first respondent is the wife of the deceased and the second and third respondents are the children, who are all dependents, were depending upon the income of the deceased Malaiyapan.

10. On a perusal of the award passed by the Tribunal, it is observed that a direction was given to the respondents 1 and 2 therein to pay compensation jointly or separately. Since the deceased was not having valid driving licence at the time of accident, this Court has adopted that "pay and recovery" method. The amount awarded by the Tribunal under various heads seems to be fair and reasonable and hence, the same is confirmed.

11. In the result, the award dated 27.11.2017 made in M.C.O.P.No.229 of 2015 by the the Motor Accidents Claims Tribunal cum Special District Judge, (MCOP Cases), in charge, Madurai, is confirmed and the Civil Miscellaneous Appeal is partly allowed. Accordingly, the claimants are entitled for a sum of Rs.11,45,977/- with interest at 7.5% per annum as compensation. The appellant/Insurance Company is directed to deposit the award amount as awarded by the Tribunal with accrued interest and costs, less the amount already deposited at the first instance, within a period of 8 weeks from the date of receipt of a copy of this order and then to recover the same from the owner of the vehicle by initiating separate proceedings before the claims Tribunal. On such deposit being made, the first respondent is permitted to withdraw her share in the award amount as apportioned by the Tribunal with proportionate accrued interest and costs. Since the respondents 2 and 3/claimants 2 & 3 are minors, their shares in the award amount shall be deposited in any one of the nationalized bank in fixed deposit, initially for a period of three years, renewable thereafter, till they attain majority. The first respondent/Mother, who is the natural guardian of the minor claimants 2 & 3 is



permitted to withdraw the accrued interest, once in three months directly from the bank and utilize the same for the welfare of the children. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS)

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To

The Motor Accidents Claims Tribunal-cum-
Special District Judge (In Charge),
Madurai.

Copy To:

The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.
Madurai. **(2 copies)**

- +1 CC to M/s.T.SIVANANTHAN, Advocate (SR-51629[F] dated 05/03/2019)
- +1 CC to M/s.S.MALAIKANI, Advocate (SR-51705[F] dated 05/03/2019)
- +1 CC to M/s.R.RAJAMANI, Advocate (SR-51625[F] dated 05/03/2019)

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