

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1237 of 2009

&

M.P.No.1 of 2009

National Insurance Co. Ltd.,
Jhaveri Mansion, Bank Street,
Hyderabad - 500 001, State of A.P.
Having D.O. Near Old Bus Stand,
Salem - 1, Salem Town Appellant/II Respondent

..Vs..

1.Sasiraka
2.Minor Gayathri
3.Minor Karthik
(minors 2 & 3 represented by mother and next friend Mrs.Sasiraka)
4.Mani @ Subramani
5.KokilaRespondents/Petitioners
6.M/s.Deepak Transport Agency (P) Ltd.,
Rep. by Sri Niketan Kumar,
R.R.Towers 8th Floor, Chirag Ali Lane,
Abids, Hyderabad, State of A.P.Respondent/I Respondent
7.M/s.Royal Sundaram Alliance Insurance Co.
No.3, Khader Nawazkhan Road, II Floor,
Chennai - 600 006. Respondent/III Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree of the learned Motor Accident Claims Tribunal (Principal District Judge) at Salem in MCOP.No.1303 of 2004 dated 17.10.2008.

For Appellants : Mrs.N.B.Surekha

For Respondents 1 to 5: Mr.P.Sathish
R6 : NA

Not ready in notice regarding R7.

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JUDGMENT

(This Appeal has been taken up for hearing through Video Conferencing)

This Appeal has been filed by the insurance company challenging the award dated 17.10.2008 passed by the Motor Accident Claims Tribunal (Principal District Judge at Salem) in MCOP.No.1303 of 2004.

2. The Appellant has filed this Appeal challenging its liability and they have also questioned the quantum of compensation awarded by the Tribunal to the Claimant.

3. Heard Mrs.N.B.Surekha learned counsel for the Appellant and Mr.P.Sathish, learned counsel for the respondents 1 to 5.

4. The Tribunal under the impugned award has directed the Appellant to pay the respondents 1 to 5 a sum of Rs.4,36,500/- as compensation together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of dependency	3,84,000/-
Loss of Love and affection	20,000/-
Loss of consortium	20,000/-
Loss of estate	2,500/-
Funeral expenses	4,000/-
Total	4,30,500/-

5. A person by name Vijayan @ Varadharajan aged 28 years died on 23.10.2003 as a result of an accident caused by a lorry bearing registration No.AP-9/T-6994 insured with the Appellant insurance company. The deceased was riding a motor cycle, when the motor cycle dashed against the insured lorry which resulted in his death. As seen from the claim petition, the insured lorry was parked in the middle of the road and only due to the negligence of the driver of the insured lorry, the accident had happened which resulted in the death of Vijayan @ Varadharajan.

6. The dependents of the deceased who are the respondents 1 to 5 herein preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the death of Vijayan @ Varadharajan. The Motor Accident Claims Tribunal by its award

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dated 17.10.2008 passed an award as detailed supra.

7. The contention of the Appellant before this Court is that they are not liable, since the insured vehicle was parked only in the left side of the road and only due to the rash and negligent driving by the rider of the motor cycle(deceased), the accident had happened. It is also their contention that FIR was also registered only against the rider of the motor cycle. It is also their case that if at all they are liable, they cannot be mulcted with the entire liability and there must be contributory negligence on the part of the rider of the motor cycle also. They have also challenged the quantum of compensation awarded by the Tribunal on the ground that the Tribunal has applied a wrong multiplier of 13.

8. This Court has perused and examined the impugned award as well as the evidence available on record before the Tribunal.

9. Before the Tribunal, the claimants have filed six documents which were marked as Ex.A1 to Ex.A6 and two witnesses were examined on their side namely, the wife of the deceased as PW1 and an eye witness to the accident PW2. On the side of the Appellant insurance company, neither any witness was examined nor any document filed before the Tribunal.

10. FIR (Ex.A1) was registered based on the complaint given by the driver of the insured lorry who cannot be termed as an independent person. However, a charge sheet has been filed by the police which clearly indicates that the insured lorry was parked in a no parking area and without any signal which resulted in the accident. Before the Criminal Court, the driver of the insured lorry has also pleaded guilty and the judgment was passed by the Criminal Court imposing fine on the driver of the insured lorry. The Criminal Court Judgment was also marked as Ex.A4 before the Tribunal. The Tribunal has considered the evidence available on record and has rightly come to the conclusion that the driver of the insured lorry is alone at fault and therefore, the Appellant insurance company is liable to pay compensation to the respondents 1 to 5.

11. The contention of the Appellant is that the deceased is also responsible for the cause of the accident cannot be accepted by this Court in view of the clinching evidence placed by the claimants before the Tribunal namely the charge sheet Ex.A3 and the Criminal Court Judgement (Ex.A4). Further no contra evidence has been produced by the Appellant/insurance company to disprove the contention of the claimants which is supported by oral and documentary evidence.

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12. Insofar as the second contention raised by the Appellant with regard to the quantum of compensation is concerned, the compensation awarded by the Tribunal under various heads as indicated earlier in this order is a just compensation in the considered view of this Court. Infact, with regard to certain heads of compensation, the compensation awarded seems to be on the lower side. However, since no appeal has been filed by the Claimants seeking enhancement of compensation, this Court is not interfering with the quantum of compensation awarded by the Tribunal .

13. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal shall stand dismissed. The Appellant insurance Company is directed to deposit the amount awarded by the Tribunal after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.No.1303 of 2004 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the respondent 1, 4 and 5 are permitted to withdraw their respective shares of award amount along with accrued interest lying to the credit of MCOP.No.1303 of 2004 by filing appropriate applications. The second and third respondents being minors, their respective shares of award amount shall be deposited in a Nationalised Bank as Fixed deposit, till they attain majority. The next friend and mother/first respondent herein is permitted to withdraw the interest once in six month for the welfare of the minors. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal
Principal District Judge, Salem.

2.The Section Officer
V.R.Section, High Court of Madras.

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+1cc to Mrs.N.B.Sureka, Advocate SR.25247

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