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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1659 of 2009

and

M.P.No.1 of 2009

(Through Video Conferencing)

National Insurance Company Ltd.,
No.66, Perundurai Road,
Erode-638 001.

...Appellant/2nd Respondent

Vs.

1. Palaniammal
2. Minor Ambika
3. Minor Karthikeyan

4. Palaniammal ..Respondents 1 to 4/Petitioners

5. M/s.Janson Textile Processors,
No.68/1A, Namakkal Road,
Thiruchengode Town and Taluk,
Namakkal District.

(Minors represented by their Mother
and Guardian the first respondent herein)

...5th Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Fair and Decreetal order in M.A.C.T.O.P.No.257 of 2006, dated 31.07.2008, on the file of the Motor Accidents Claims Tribunal, (Sub Judge), Sankari.

For Appellant : Ms.N.B.Sureka

For Respondents: Mr.K.Ramkumar
for R1 to R4

JUDGMENT

The appellant Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and decree dated 31.07.2008 passed by the Motor Accidents Claims Tribunal, Sub Judge, Sankari in M.A.C.T.O.P.No.257 of 2006.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,85,000/- together with interest at 7.5% per annum from the date of filing of the claim petition, till



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the date of payment, as compensation to the respondents/claimants namely the first to fourth respondents who are the wife, two minor children and the mother of the deceased Durai @ Ayyadurai who was aged about 37 years at the time of the accident.

3. In the claim petition before the Tribunal, it was alleged that the deceased was originally earning Rs.6,000/- per month and was employed as Load Man by the fifth respondent/Janson Textile Processors and that the said company had taken a insurance policy to cover the liability of the 7 employees.

4. This appeal is mainly contested by the appellant/Insurance Company, on the ground that the Tribunal ought to have awarded a sum of Rs.3,60,262/- as compensation together with interest under the provisions of the Workmen's Compensation Act, 1923. On the other hand, the learned counsel for the 1st to 4th respondents/1st to 4th claimants submits that the Tribunal has awarded a fair compensation and accordingly, awarded interest at 7.5% from the date of claim petition till the date of impugned order.

5. Heard, the learned counsel for the appellant and the respondents.

6. It is noticed that Section 167 of the Motor Vehicle Act, 1988, gives an option to the claimants to claim/seek compensation either under the provisions of the Workmen's Compensation Act, 1923 or under the provisions of the Motor Vehicle Act, 1988. In this case, the respondents/claimants have opted to claim compensation under the provisions of the Motor Vehicle Act, 1988. Therefore, the compensation awarded by the Tribunal under the provisions of Motor Vehicle Act cannot be faulted as the Tribunal has merely followed the provisions of the Motor Vehicles Act, 1988.

7. The Tribunal has awarded a sum of Rs.4,85,000/-, therefore, it cannot be questioned. The learned counsel for the appellant/Insurance Company requested for deduction of interest. However, it is noticed that difference on interest at 12% on Rs.3,60,262/- under the Workmen's Compensation Act, 1923 and interest at 7.5% on Rs.4,85,000/- is marginal. Therefore, there is no merits on this score.

8. In any event, it is noticed that, this is a case of fatal accident, where the family has been left orphaned and has been pushed to the brinks of indigency. But for the provisions of the Motor Vehicles Act, 1988, such families have to suffer in penury.



9. Therefore, I do not wish to interfere with the compensation awarded by the Tribunal.

10. The learned counsel for the 1st to 4th respondents/1st to 4th claimants submitted that, the appellant/Insurance Company had deposited the entire amount of compensation and that 50% of the same has been withdrawn. That being the case, the respondents/claimants are permitted to withdraw the balance compensation lying in the account.

11. This Civil Miscellaneous Appeal stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

arb

To:

The Motor Accidents Claims Tribunal, (Sub Judge),
Sankari.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s.N.B. Surekha, Advocate sr 34435.

C.M.A.No.1659 of 2009
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GP(CO)
SP(31/08/2021)