

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.203 of 2010

and

M.P.No.1 of 2010

(Through Video Conferencing)

The National Insurance Co. Ltd.,
Mettupalayam Branch,
Office at No.157, Karamadai Main Road,
R.V.R.Buildings, Mettupalayam,
Coimbatore District. Appellant/5th Respondent

Vs.

1.G.Deva Sudhakar (died)1st Respondent/Claimant

2.Stephen

3.M/s.United India Insurance Co. Ltd.,
Divisions Office X, Code No.072400,
No.21, St. Patrics Building,
Musuem Road, Bangalore - 560 025.

4.G.RameshRespondents 2 to 4/Respondents 1 to 3

5.Hilda Sudhakar 5th Respondent/LR
of the deceased 1st Respondent (Claimant)

(Respondents 2 to 4 were set exparte in the Lower Court)

(R5 brought on records as LR of the deceased R1 G.Deva
Sudhakar vide order dated 08.11.2019 made in
C.M.P.Nos.20446, 20448 & 20453 of 2019)

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the Judgment and Decree
dated 19.10.2009 made in M.C.O.P.No.1191 of 2004 on the file
of the Motor Accident Claims Tribunal (Additional District
Judge) (Fast Track Court No.II) at Salem.

For appellant : M/s.R.Sreevidhya

For 5th respondent: Mr.L.G.Sahadevan

For 3rd respondent: Mr.S.Arun kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company, against the impugned Judgment and Decree dated 19.10.2009 passed by the Motor Accidents Claims Tribunal, Salem in M.C.O.P.No.1191 of 2004.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,28,100/- as compensation, payable by the appellant Insurance Company and 2nd to 4th respondents jointly or severally to the 1st respondent/claimant.

3. During the pendency of this appeal, the 1st respondent/claimant died and therefore, 5th respondent, namely, Hilda Sudhakar being wife of the deceased 1st respondent/claimant, was impleaded vide court order dated 08.11.2019 passed in C.M.P.Nos.20446, 20448 & 20453 of 2019.

4. The case of the 1st respondent/claimant (since deceased) before the claim petition was that he was suffered injuries in a motor accident on 03.05.2002 at about 4.30 a.m. The accident is said to have taken place when the 1st respondent/claimant (since deceased) was driving a Tempo Traveller bearing registration No.KA-04-P-5740 belonging to the 2nd respondent insured with the 3rd respondent. It was alleged that a Tata 407 Maxi Van bearing registration No.TN-74-Z-0015 belonging to the 4th respondent insured with the appellant Insurance Company was driven by its driver in a rash and negligent manner and dashed the Tempo Traveller driven by the 1st respondent/claimant. As a result of the impact, the 1st respondent/claimant (since deceased) sustained fracture injuries and was admitted in the hospital for treatment. The 1st respondent/claimant (since deceased) filed the above claim for compensation for the injuries suffered by him.

5. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation. Since the Tribunal has confirmed that the 1st respondent/claimant (since deceased) and 4th respondent were guilty equally for the accident, it has apportioned the liability equally between them. The appellant Insurance Company being insurer of the Tata 407 Maxi Van belonging to the 4th respondent, has filed this Civil Miscellaneous Appeal on the ground that the the Tribunal erred in awarding the compensation by holding the appellant Insurance Company is responsible for the same in as much as the 1st respondent/claimant (since deceased) was a tortfeasor.

6. It is further submitted that the Tata 407 Maxi Van was carrying more than 12 passengers. Therefore, the accident occurred on the negligence of the driver of Maxi Cap belonging to the 4th respondent. It is submitted that the Tribunal erred

in noting that in the accident, 3 persons died and 10 persons sustained grievous injuries and 20 persons suffered simple injuries.

7. The appellant Insurance Company has also questioned the quantum of compensation that has been awarded to the 1st respondent/claimant (since deceased).

8. I have considered the arguments of the both side counsels. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

9. The factum of the accident and the injury sustained by the 1st respondent/claimant are not in dispute. P.W.2 Doctor has opined that the 1st respondent/claimant had suffered 80% disability and there was mal-union of bones and the 1st respondent/claimant was unable to sit or squat easily and unable to walk without stick.

10. Though the method adopted for determining the compensation appears to contrary to the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343, the quantum of compensation fixing a liability of Rs.4,28,100/- on the appellant and the 3rd respondent appears to be reasonable. Therefore, I find no reasons to interfere with the quantum of compensation and the liability.

11. The appellant Insurance Company and the 3rd respondent Insurance company are therefore directed to deposit 50% of Rs.4,28,000/- each together with interest at 7.5% per annum thereon from the date of the claim petition till the date of deposit, less if any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

12. On such deposit, the 5th respondent being the legal representative of the deceased 1st respondent/claimant is permitted to withdraw the amount of compensation awarded to 1st respondent/claimant, less if any amount already withdrawn, by filing suitable application.

13. This Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To:-

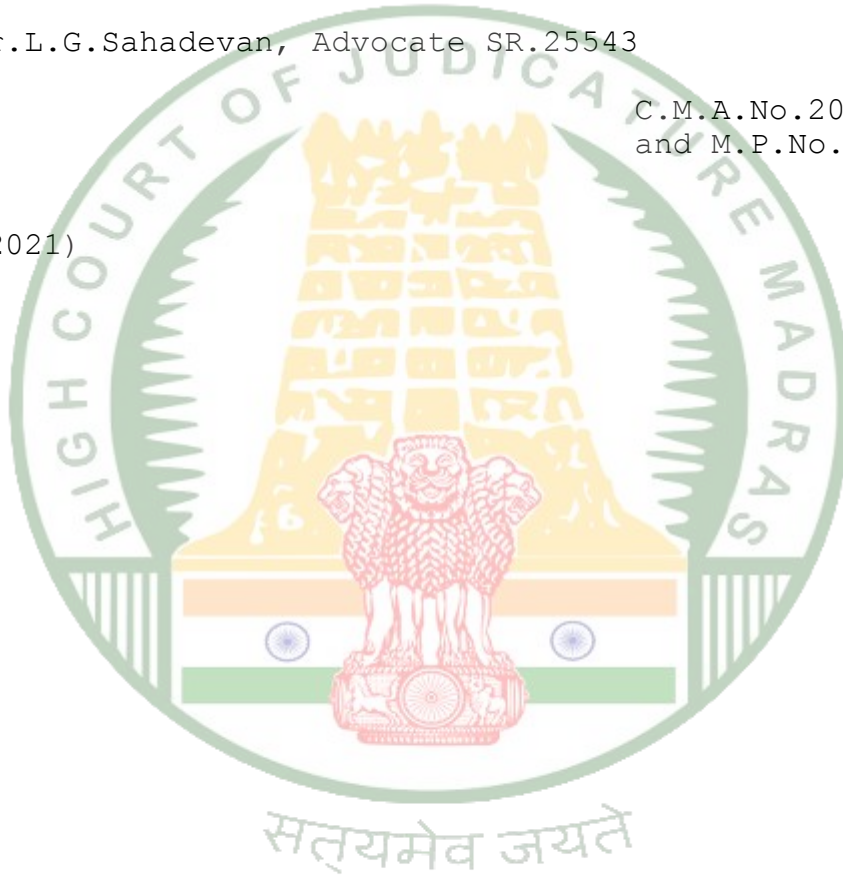
The Additional District Judge,
The Motor Accident Claims Tribunal,
Fast Track Court No.II,
Salem.

Copy to: The Section Officer,
VR Section,
High Court, Madras-104.

+2cc to Mr.L.G.Sahadevan, Advocate SR.25543

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SV(CO)
CB(07/01/2021)



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