

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.1272 of 2012  
and  
MP.No.4 of 2012

The New India Assurance Co. Ltd.,  
202, 204, M.G.Road, Pondicherry - 1.

...Appellant

Vs.

1. Vanaja  
(R1 declared as major and R3 [Gnanambal]  
discharged from her guardianship vide order  
of Court dated 31.08.2012 made in  
MP.Nos.2 and 3 of 2012 in CMA.No.1272 of 2012)

2.Minor Poorani

3.Gnanambal

4.Vijayalakshmi

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 29.09.2011 passed in MCOP.No.157 of 2010 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Tindivanam.

For Appellant : Mr.M.Krishnamoorthy

For Respondents: Mr.N.Subramani for R1 to R3  
R4 - Exparte

J U D G M E N T

The New India Assurance Company, the second respondent in MCOP.No.157 of 2010 on the file of the Motor Accidents Claims Tribunal/ Principal Subordinate Judge, Tindivanam has filed this appeal questioning the liability and quantum of compensation awarded by the Tribunal.

2. The respondents 1 to 3 / claimants filed the above claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the death of Krishnamoorthy, father of the respondents 1 and 2 and son of the respondent 3 in a road accident that took place on 24.09.2009.

3. On 24.09.2009, the deceased Krishnamoorthy was riding a motorcycle bearing Registration No.PY 01 AX 8614, belonging to his wife (fourth respondent) on Nallaavoor - Uppuveloor road, opposite to Government Higher Secondary School, Pudhukkuppam Village. At about 05.30 pm, while he tried to pass over a speed breaker, he lost his control and fell down. Immediately, he was taken to JIPMER Hospital at Puducherry. However, he died on 27.09.2009. Therefore, the respondents 1 to 3 / claimants, filed MCOP.No.157 of 2010, seeking compensation for the death of Krishnamoorthy.

4. Before the Tribunal, on the side of the respondents 1 to 3 / claimants, PW1 and PW2 were examined and Exs.P1 to P3 were marked. On the side of the respondents therein, no oral or documentary evidence was marked.

5. The owner of the said motorcycle (fourth respondent/wife of the deceased) remained absent before the Tribunal and she was set exparte. The appellant / Insurance Company contested the claim petition. The learned Motor Accident Claims Tribunal / Principal Subordinate Judge, Tindivanam, after analysing the documentary and oral evidence on record, awarded a compensation of Rs.8,80,000/- together with interest at the rate of 7.5% per annum to the respondents 1 to 3 / claimants.

6. Challenging the said award dated 29.09.2011 in M.C.O.P.No.157 of 2010, granting compensation to the respondents 1 to 3 / claimants, the appellant / Insurance Company has come out with the present appeal.

7. The learned counsel appearing for the appellant / Insurance Company submitted that the deceased was solely responsible for the accident as he rode the motorcycle owned by his wife, the fourth respondent herein in a rash and negligent manner, without driving licence. He also submitted that the Tribunal overlooked the aspect that the risk of a two wheeler rider was not required to be covered under Section 147 of the Motor Vehicles Act, 1988. He further contended that the Tribunal erred in holding that the wife of the deceased was responsible for the accident and the Tribunal also overlooked the fact that the tortfeasor or his legal representatives are not entitled to compensation even under no fault liability. Hence, he prayed for allowing this appeal.

8. Per contra, the learned counsel appearing for the respondents 1 to 3 / claimants contended that the Tribunal, after considering all the materials available on record in proper perspective, has awarded compensation, which is not excessive and prayed for dismissal of the appeal.

9. Heard the learned counsel for the appellant / Insurance Company and learned counsel for the respondents 1 to 3 / claimant. Perused the materials available on record.

10. A perusal of the materials on record shows that nowhere in the claim petition it is mentioned that the deceased died due to any external intervention or due to any damage on the road. It is only stated that on the fateful day, while trying to pass over the speed breaker, he lost his control and fell down. Therefore, the negligence can be attributed only on the person who rode the vehicle and hence, he is not entitled to compensation under the Insurance Policy. It is relevant to extract Section 140 of the Motor Vehicles Act, 1988.

"140. Liability to pay compensation in certain cases on the principle of no fault. -

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicles shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under subsection (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty - five thousand rupees].

(3) In any claim for compensation under subsection (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect

of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

Therefore, as per sub-section (2) of section 140 of the Motor Vehicles Act, 1988, this Court is inclined to direct the appellant / Insurance Company to pay limited amount by way of compensation to the deceased person who died due to the accident arising out of the use of a motorcycle on the basis of "no fault liability". Under such circumstances, he would be entitled to Rs.50,000 or Rs.25,000 as the case may be, for death or permanent disablement. Applying the above provisions, the respondents 1 to 3 / claimants are entitled only to a compensation of Rs.50,000/-, since Krishnamoorthy died in the said accident. Hence, the award passed by the Tribunal is reduced from Rs.8,80,000/- to Rs.50,000/-.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,80,000/- is hereby reduced to Rs.50,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant / Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, to the credit of MCOP.No.157 of 2010 on the file of the Principal Subordinate Judge / Motor Accident Claims Tribunal, Tindivanam within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 3 / claimants 1 and 3 are permitted to withdraw their respective share of the modified award amount on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The second respondent / second claimant is a minor and therefore, her share of compensation is ordered to be deposited in any one of the nationalized banks until she attains majority. The appellant/Insurance Company is permitted to withdraw the excess amount, lying in the deposit to the credit of M.C.O.P.No.157 of 2010, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,  
The Principal Subordinate Judge,  
Tindivanam.

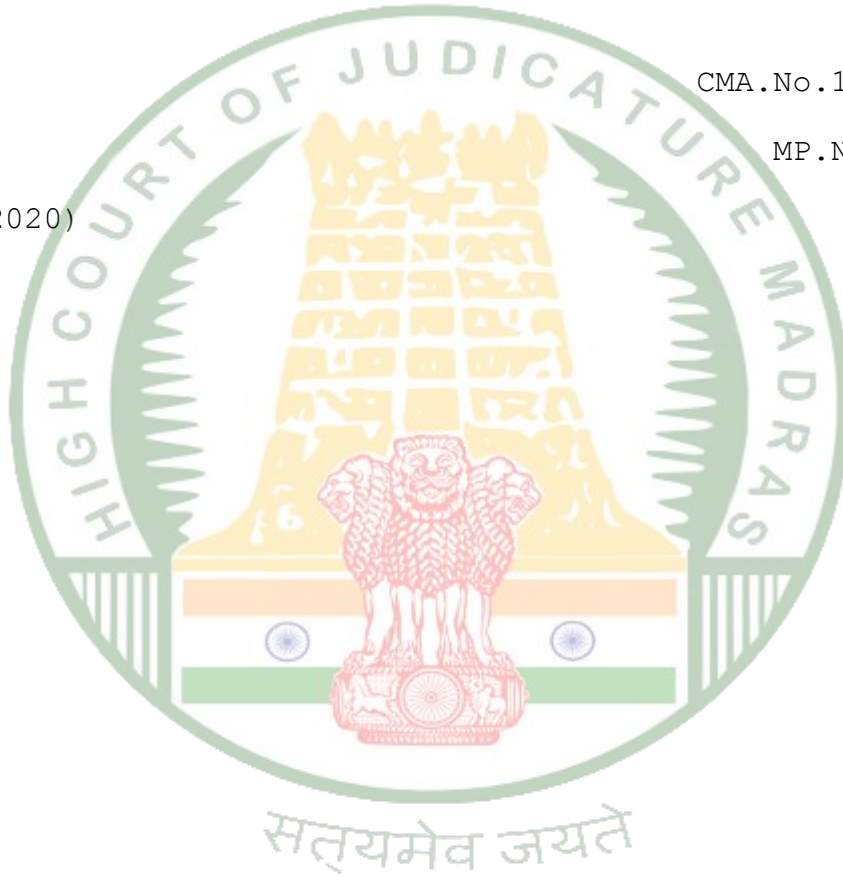
2.The Section Officer  
VR Section  
High Court, Madras 104.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 7335.

+1 CC to Mr.S.N. Subramani, Advocate sr 6616.

CMA.No.1272 of 2012  
and  
MP.No.4 of 2012

SPD(CO)  
SP(15/12/2020)



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