

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2288 of 2011

and

M.P.No.1 of 2011

(Through Video Conferencing)

National Insurance Co. Ltd.,
Branch Office,
163/1B, Salem Bhavani Road,
Sankagiri. ... Appellant/2nd Respondent

Vs.

1.S.Vasuki
2.Minor Priya
3.Minor Saridha
4.Kalyani ... Respondents 1 to 4/Claimants
5.K.Palanisamy ... 5th Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 12.11.2010 and made in M.A.C.T.O.P.No.1225 of 2008, on the file of Court of the Motor Accident Claims Tribunal (Principal District Judge) Krishnagiri.

For Appellant : Mr.S.Vadivel

For R1 to R4 : No appearance

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 12.11.2010 passed by the Motor Accident Claims Tribunal (Principal District Judge), Krishnagiri in M.A.C.O.P.No.1225 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs. 4,31,000/- together with interest at 6% per annum from the date of claim petition till date of realization to the 1st to 4th respondents/claimants. At the time of admission of this Civil Miscellaneous Appeal, the appellant was directed to deposit 50% of the award amount together with interest thereon and the cost after deducting the amount already deposited to the credit of the aforesaid

case before the Tribunal.

3. The appellant is the insurer of the accident lorry of the 5th respondent bearing registration No.KA-01-C-5474. 1st to 4th respondents/claimants are the dependents and the legal heirs of the deceased Sanker. It was the case of the 1st and 4th respondents/claimants that the deceased Sanker died in a road accident on 16.8.2007 while driving the accident lorry belonging to the 5th respondent, when it was hit by a bus bearing registration No.MH-18-C-9986 coming from the opposite direction. The deceased suffered grievous injuries and was taken to the hospital where he succumbed to the injuries.

4. It is the case of the appellant Insurance Company that the deceased Sankar himself was a tortfeasor and therefore the Tribunal erred in awarding compensation under Section 163-A(2) of the Motor Vehicles Act, 1988. That apart, it is also stated that the Tribunal erred in determining the income of the deceased as Rs.3,300/- per month, to bring the case within the purview of the ceiling under Section 163-A(2) even though the 1st to 4th respondents/claimants had stated that the deceased was earning a sum of Rs.5000/- per month. It is submitted that 1st to 4th respondents/claimants should have filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 as established the case. It is further stated that the injury or death of the driver and cleaner was not covered by the insurance policy and therefore the Tribunal erred in awarding compensation to the 1st to 4th respondents/claimants.

5. I have considered the arguments advanced by the learned counsel for the appellant. There is no representation on behalf of the 1st to 4th respondents/claimants. Notice on the 5th respondent has also remained unserved. The 1st to 4th respondents/claimants had decided to prosecute the claim petition under Section 163-A (2). It is a special Provision under the Act for payment of compensation on structured formula basis.

6. The owner of the vehicle/the insurer are liable to pay compensation in case of death or permanent disablement due to accident out of the use of motor vehicle as indicated in the 2nd schedule to the Act to the legal heirs of the victims as the case may be.

7. Under the aforesaid Provision, the 1st to 4th respondents/claimants are not required to plead or establish that the death or permanent disablement was due to any wrongful Act or neglect or default of the owner of the vehicle or the vehicle concerned or any other person.

8. Thus, the question of the 1st to 4th respondents/claimants' pleading or establishing death by letting evidence due to any wrongful Act or neglect or default of the owner of the vehicle cannot be countenanced. In my view, the 1st to 4th respondents/claimants had opted for a structured compensation which does not require elaborate

greeting and evidence and therefore, there is no merits in this Civil Miscellaneous Appeal.

9. On the other hand, if the 1st to 4th respondents/claimants had filed a petition under Section 166 of the Motor Vehicles Act, 1988, they would have perhaps been entitled to a higher compensation as per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121 and as per the decision of the Hon'ble Supreme Court in National Insurance Co Ltd Vs. Pranay Sethi and others, (2017) 16 SCC 680.

10. I find therefore no merits in this Civil Miscellaneous Appeal. Under these circumstances, the present appeal is liable to be dismissed. The appellant Insurance Company is therefore directed to deposit the balance amount of compensation together with interest at 6% per annum from the date of claim petition till the date of realisation and cost, to the 1st to 4th respondents as was awarded by the Tribunal in the impugned Judgment and Decree, less already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

11. On such deposit being made by the appellant Insurance Company, 1st to 4th respondents shall be entitled to withdraw the same in the same proportion and condition as was ordered by the Tribunal in the impugned Judgment and Decree, by filing appropriate application before the Tribunal.

12. This Civil Miscellaneous Appeal stands dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
(Principal District Judge)
Krishnagiri.

Copy To

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

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