

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2090 of 2015

The Branch Manager,
National Insurance Company Limited,
Branch Office, 1st Floor,
Saradhamma Building,
Byepass Road,
Hosur-635 109.

... Appellant/Respondent No.2

vs.

Mathurappa
Ellammal
Mr.S.Anjappa

... Respondent No.1/Petitioner No.1
... Respondent No.2/Petitioner No.2
... Respondent No.3/Respondent No.1

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.04.2012 passed in M.C.O.P.No.137 of 2011 on the file of the learned Additional District Judge, Additional District Court-cum-Motor Accidents Claims Tribunal, Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For Respondents 1&2 : Mr.Mukund R.Pandiyan

For Respondent-3 : No Appearance

J U D G M E N T

The present Civil Miscellaneous Appeal is directed against the judgment and decree dated 19.04.2012 passed by the learned Additional District Judge, Additional District Court-cum-Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P.No.137 of 2011.

2. The accident occurred on 12.02.2010 at about 20.00 hours, while the deceased, Narayanasamy, son of Mathurappa, was walking on the left side of the road after getting down from the bus at G.Mangalam Bus Stop. At that time, the rider of Hero Honda Bike bearing Registration No.TN-24-T-

1620 was driven in a rash and negligent manner from Hosur side and dashed forcibly on the said Narayanasamy and caused the accident. The said Narayanasamy sustained grievous injuries and he was taken to Bangalore and admitted in NIMI HANS Hospital for treatment and unfortunately, he died on 13.02.2010. The Bagalur Police Station, Krishnagiri District registered a case in Crime No.43 of 2010 under Sections 279 and 304 (A) of IPC. The legal heirs of the deceased filed a claim petition, seeking compensation of Rs.15 lakhs.

3. The Tribunal adjudicated the issues with reference to the documents as well as the evidences. The Tribunal arrived at a conclusion that Ex.P-6 is the prima facie document to show that the Motorcyclist was at fault and therefore, the accident had occurred due to the rash and negligent riding of the said Motorcycle.

4. The learned counsel appearing on behalf of the appellant-Insurance Company also relied on the rough sketch prepared by the Inspector of Police, Bagalur Police Station, Krishnagiri District in Crime No.43 of 2010. Based on the rough sketch, the learned counsel for the appellant-Insurance Company contended that he was proceeding towards the Tasmac Shop and the deceased had suddenly crossed the road and caused the accident and therefore, the deceased contributed for the negligence and therefore, the Tribunal has committed an error in fixing the liability on the Insurance Company.

5. This Court is of the considered opinion that even in case of such negligence, the total liability cannot be shifted and the Tribunal has proceeded on the basis that the deceased also committed negligence to some extent. However, the denial of compensation in such cases would be harsh. The liability is fixed, the coverage of policy is also established. Even the amount of negligence committed by the deceased in such cases are to be viewed leniently, taking into consideration, the plight and the livelihood of the dependents and their family members, who are all depending on the deceased.

6. In all such cases where the deceased contributed for negligence, then the compensation which is just and is to be ascertained and by taking into consideration the over all facts and circumstances. In the present case, the accident was established, FIR was registered, the deceased was crossing the road suddenly and the Tribunal fixed the compensation of Rs.6,83,000/-. Fixing the compensation of Rs.6,83,000/-, that too in a fatal case, cannot be construed as excessive and the monthly income of the deceased itself has been fixed as Rs.4,500/-. This being the factum, this Court is not inclined to interfere with the quantum of compensation.

7. Accordingly, judgment and decree dated 19.04.2012 passed by the learned Additional District Judge, Additional District Court-cum-Motor Accidents Claims Tribunal, Krishnagiri in M.C.O.P.No.137 of 2011 is confirmed and consequently, C.M.A.No.2090 of 2012 stands dismissed. However, there shall be no order as to costs.

8. The appellant-Insurance Company is directed to deposit the entire Award amount along with accrued interest, if not already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the respondents-claimants are permitted to withdraw the amount with an accrued interest at the rate of 7.5% per annum by filing an appropriate application and as per the apportionment granted by the Tribunal in the Motor Accidents Claims Tribunal. The payments are to be made only through RTGS.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Additional District Judge,
Additional District Court-cum-Motor
Accidents Claims Tribunal,
Krishnagiri.

Copy to
The Section Officer,
VR section High Court,
Madras.

+1cc to Mr.D.Bhaskaran, Advocate Sr.21245

+1cc to Mr.Mukund R.Pandiyan, Advocate Sr.21406

CMA No.2090 of 2015

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srg 22/12/2020