

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3783 of 2011

and

M.P.No.1 of 2011

(Through Video Conferencing)

The Director of Fire Service,
Tamil Nadu Fire Service,
Coimbatore. Appellant/Respondent

Vs.

1.Tamilselvi

2.Minor Navin Jawahar

3.Minor Raghul

(2nd and 3rd minor respondents are rep.
their N.F. Mother namely Tamilselvi)

4.Kilipattammal

5.Subramani Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.11.2010, passed by the Motor Accident Claims Tribunal, (Subordinate Judge), Tirupattur, Vellore District made in M.C.O.P.No.113 of 2007.

For appellant : Mr.N.Devnarendran, G.A.

For respondents: No appearance

J U D G M E N T

Though there is no representation for the respondents, this Civil Miscellaneous Appeal is taken up for final disposal since no adverse orders are proposed to be passed against the respondents.

2. The appellant is the Director of Fire Service, Tamil Nadu Fire Service, Coimbatore and is aggrieved by the impugned Judgment and Decree dated 18.11.2010 passed by the Motor Accidents Claims Tribunal, Tirupattur, Vellore District.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,82,834/- as compensation payable by the

appellant Fire Service Department to the respondents/claimants together with interest at 7.5% p.a from the date of the claim petition till the date of the impugned Judgment and Decree. The Tribunal has also directed the appellant Fire Service Department to deposit the award amount within the period of 60 days from the date of the impugned Judgment and Decree, failing which, the appellant Fire Service Department was also liable to pay the interest at 7.5% from the date of Judgment till the date of deposit.

4. It is case of the appellant Fire Service Department that the deceased Dhandapani aged about 45 years was negligent. When the deceased was driving a Fire Engine bearing registration No.TN-37-G-0238 of the appellant to attend an emergency call, he tried to overtake a bus at Kariamangalam Bus Stop. While overtaking the bus, he tried to avoid the collision with vehicle. The deceased thus lost control of Fire Engine and hit against a tamarind tree, as a result of which, the deceased sustained grievous injuries and died on the spot. The other firemen who were travelling in the Fire Engine escaped with injuries.

5. Therefore, a Claim Petition was filed by the wife and the sons and the parents of the deceased under Section 166 (A) of the Motor Vehicles Act, 1988. However, the Tribunal has awarded the aforesaid compensation under Section 163(A) of the Act.

6. The appellant Fire Service Department has preferred this appeal questioning the same and has raised the several grounds.

7. I have considered the arguments advanced by the appellant. I have also perused the evidence on record.

8. The issue is now squarely covered by a decision of the Hon'ble Supreme Court in United India Insurance Company Ltd. Vs. Sunil Kumar, reported in 2017 (2) TN MAC 753: (2019) 12 SCC 398, wherein, it was held that defence of contributory negligence is not available in case of a claim under Section 163-A of the Act.

9. Therefore, I do not find any merits in this appeal and this appeal is liable to be dismissed. The appellant Fire Service Department is therefore directed to deposit the compensation together with interest and cost awarded by the Tribunal, less if any amount already deposited, within period of eight weeks from the date of receipt of a copy of this Judgment.

10. On such deposit, the 1st and 4th to 5th respondents are permitted to withdraw their respective share together with interest accrued thereon, less if any amount already

withdrawn, by filing suitable application.

11. Since the 2nd and 3rd respondents are minor, their shares shall be deposited in any one of the Nationalized Bank by the Tribunal under re-investment scheme till they attain majority. The 1st respondent, who is guardian of the 2nd to 3rd respondents, is permitted to withdraw the accrued interest from the minor's deposit once in three months directly from the said Bank. On attaining majority, 2nd and 3rd respondents may be permitted to withdraw their shares, by filing suitable application before the Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To:-

The Motor Accident Claims Tribunal,
((Subordinate Judge),
Tirupattur, Vellore District.

Copy To

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

+1cc to the Special Government Pleader, S.R.No. 25968

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