

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.513 of 2016

And

C.M.P.No.4309 of 2016

M/s.National Insurance Company Limited,
Branch Office,
1/4, Pudukottai Road,
Trichirappalli-20. ... Appellant/Respondent No.2

vs.

1.Sudha ... Respondent No.1/Petitioner No.1
2.Minor Mahalakshmi ... Respondent No.2/Petitioner No.2
3.Bakkiyam ... Respondent No.3/Petitioner No.3
4.Minor Kasiraja ... Respondent No.4/Petitioner No.4
R.Selladurai (died)
5.Maruthambal ... Respondent No.5/RespondentNo.3
(Minors R-2/P-2 and R-4/P-4
represented by their mother/natural
guardian Sudha R-1/P-1)

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 06.04.2009 passed in M.C.O.P.No.516 of 2005 on the file of the learned Chief Judicial Magistrate, Chief Judicial Magistrate Court-cum-Motor Accidents Claims Tribunal, Perambalur.

For Appellant : Ms.R.Sreevidhya

For Respondents 1to4 : Mr.T.Gobinath

For Respondent-5 : Ex Parte before the Tribunal

J U D G M E N T

The present Civil Miscellaneous Appeal is preferred against the judgment and decree dated 06.04.2009 passed by the learned Chief Judicial Magistrate, Chief Judicial Magistrate Court-cum-Motor Accidents Claims Tribunal, Perambalur in MCOP No.516 of 2005.

2. The accident occurred on 08.09.2004 at about 16.45

hours, at BSNL Godown, Athur to Perambalur Road. The Perambalur Police Station registered a case in Crime No.659 of 2004 under Sections 279, 337 and 304 (A) of IPC.

3. The claim petition was filed, seeking compensation of Rs.10 lakhs. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the parties concerned.

4. The factum regarding the accident was established and the liability of the Insurance Company is also ascertained. The coverage of policy was not disputed and the learned counsel for the appellant mainly contended that the assessment of negligence has not been considered by the Tribunal, in fact, the insured vehicle with the appellant has not committed any negligence and therefore, the Tribunal ought to have fixed the contributory negligence on the part of the offending vehicle, which was not done.

5. Perusal of the Award reveals that even in case of fixing some amount of negligence on the part of the offending vehicle, there may not be much variations in the quantum of assessment to be awarded. The total compensation awarded is Rs.6,93,000/- and it is a case of death. Four dependents are the claimants. Out of which, two are minors. The deceased was the breadwinner of the family and the first claimant is the wife of the deceased and the third claimant is the mother of the deceased and the claimants 2 and 4 are the minor children.

6. Under these circumstances, this Court is of the considered opinion that the quantum of compensation awarded by the Tribunal is just and reasonable and no interference is called for. Thus, the contentions raised on behalf of the appellant that the Tribunal has failed to assess the negligence deserve no merit consideration on account of efflux of time and on the fact that the quantum of compensation awarded by the Tribunal, cannot be construed as exorbitant.

7. The learned counsel for the appellant made a submission that the rider of the vehicle, at the time of accident, was not possessing a valid driving license. The Tribunal has not considered the same under Section 149 (4) of the Motor Vehicles Act, 1988. The Tribunal ought to have ordered pay and recovery, enabling the Insurance Company to recover the compensation from the owner of the vehicle. Thus, this Court is of an opinion that the respondents/claimants are entitled for pay and recovery.

8. Accordingly, the judgment and decree dated 06.04.2009 passed by the learned Chief Judicial Magistrate,

Chief Judicial Magistrate Court-cum-Motor Accidents Claims Tribunal, Perambalur in MCOP No.516 of 2005 is modified to the extent that the quantum of compensation awarded shall be recovered by the Insurance Company from the owner of the vehicle. In all other aspects, the quantum as well as the findings are confirmed. Thus, judgment and decree dated 06.04.2009 passed by the learned Chief Judicial Magistrate, Chief Judicial Magistrate Court-cum-Motor Accidents Claims Tribunal, Perambalur in MCOP No.516 of 2005 is modified and accordingly, the appellant-Insurance Company is at liberty to file an execution petition to recover the compensation awarded by the Tribunal, from the owner of the vehicle by following the procedures contemplated.

9. Accordingly, C.M.A.No.513 of 2016 stands allowed in part. However, there shall be no order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Chief Judicial Magistrate,
Chief Judicial Magistrate Court-cum-
Motor Accidents Claims Tribunal,
Perambalur.

Copy To

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

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.22094
+1cc to Mr.T.Gopinath, Advocate, S.R.No. 21388

CMA No.513 of 2016

PP(CO)
GN(29/01/2021)