

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.948 of 2017

and

C.M.P.No.4648 of 2017

The Branch Manager,
National Insurance Company Ltd.,
Branch Office, Second Floor,
10.03.74, P.V.N. Complex,
Seshapeeran Street,
Chittoor,
Andhra Pradesh - 517 001. Appellant/3rd Respondent

Vs.

1.Vijayalakshmi
2.MinorVaishali
3.Minor Vishnu ... Respondents1 to 3/
Claimants1 to 3

(Minors represented by
N.F. Mother Vijayalakshmi)
4.Thanapathy Naidu
5.A.Srinivasalu ... Respondents4& 5/
Respondents1&2

Appeal under Section 173 of the Motor Vehicles Act
against the judgment and decree dated 04.07.2012 made in MACOP
No.1029 of 2010, on the file of the Motor Accidents Claims
Tribunal, Additional District Court, Krishnagiri.

सत्यमेव जयते

For Appellant : Mr.S.Vadivel

For R1 to R3 : Mr.MukundR.Pandiyan

JUDGMENT

This appeal is preferred by the appellant/Insurance
Company as against the award passed by the Tribunal on
04.07.2012 in MACOP No.1029 of 2010.

2.The brief facts of the case are as follows:

On 11.11.2006, at about 11.45 hours, while the deceased
Mariappan was riding the Yamaha Crux Motorcycle, bearing
Reg.No. TN-24-Z-6683 in the Hosur to Krishnagiri NH road near

the Addakurikki Eri, a bus which was going in front of the motorcycle turned towards left lane from the right lane of the tar road. At that time, the lorry bearing Registration No.TN 23 J 0486, belonging to the 5th respondent and insured with the appellant/Insurance Company, came in the reverse direction in a rash and negligent manner and dashed against the motorcycle forcibly, as a result of which, the deceased sustained fatal injuries and died on the spot. The legal heirs of the deceased / respondents 1 to 3, filed a claim petition before the Tribunal claiming a sum of Rs.30,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a compensation of Rs.21,20,000/- with interest at the rate of 6% per annum from the date of petition, and the same has been directed to be paid by the appellant Insurance Company as well as the fifth respondent/owner of the lorry, jointly and severally. Challenging the same, the present appeal has been filed by the Insurance Company.

3.The learned counsel appearing for the appellant/Insurance Company has submitted that the deceased was the tort-feasor and invited the accident, which is evident from Ex.P1-FIR and Ex.R2-Investigation Report. It is further contended that the Tribunal has failed to see that at the time of accident the deceased was not holding a valid driving license to ride the motorcycle and that the vehicle was not insured with the appellant/Insurance Company as could be seen from Ex.R2/MVI Report. The Tribunal failed to see that the lorry in question was parked for the purpose of watering the plants in the meridian of the four lane road and the deceased dashed his motorcycle against the stationed lorry from behind. The Tribunal without any valid reason failed to accept the evidence of R.W1, R.W.2 and R.W.3. In any event the compensation awarded by the Tribunal is excessive, according to the learned counsel for the appellant.

4.Per contra, the learned counsel appearing for the respondents 1 to 3 / claimants, contended that the Tribunal has rightly considered the materials and evidence and has awarded the compensation, which is just, fair and reasonable and hence the same need not be interfered with by this Court.

5.P.W.2-Krishnan is the eye-witness to the occurrence. He deposed before the Tribunal that on the date of accident at about 11.45 a.m., when he was proceeding from Hosur towards Soolagiri, he saw a person riding an Yamana Crux motorcycle at a distance of 50 feet ahead of him in the Hosur-Krishnagiri National Highway at a moderate speed and when the motorcycle reached near Addakurikki, a bus which was proceeding ahead of him turned to the left from right and the motorcyclist tried to overtake the bus under the impression that the bus had given way to him, but the lorry which was coming on reverse and was pouring water to the plants in the median, hit the motorcycle due to which he sustained fatal injuries and died

on the spot. There is no contra evidence on the part of the appellant/Insurance Company to establish their case that the accident had occurred only due to rash and negligent riding by the deceased. In the circumstances, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the fifth respondent. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

6.As far as quantum of compensation is concerned, there is no grievance on the side of the appellant. Hence, the same is confirmed as such.

7.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

8.Both the 5th respondent as well as the appellant/Insurance Company are directed to deposit the compensation awarded by the Tribunal, with interests and costs, jointly and severally, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The minor respondents 2 and 3 would have attained majority by now. Hence, on such deposit being made, the respondents 1 to 3 / claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The Motor Accidents Claims Tribunal
Additional District Judge,
Krishnagiri.

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

C.M.A.No.948 of 2017
and

C.M.P.No.4648 of 2017

LN CO

A.SK(27.04.2021)