



C.M.A(MD)NO.1415 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

WEB COPY

C.M.A(MD)NO.1415 of 2008

and

M.P(MD)No.1 of 2008

The New India Assurance Company Limited,
through its Divisional Manager,
Kamarajar Salai,
Madurai-9.

: Appellant/Second Respondent

.vs.

1.Jeyanthi

2.Minor Sonaimuthu

3.S.Moorthy

4.M.Panjavarnam

: Respondents 1 to 4/Petitioners

5.S.Arumugasamy

: 5th Respondent/1st Respondent

(Second respondent being minor, represented through his mother and guardian, the first respondent herein Jeyanthi)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.76 of 2005, dated 21.4.2008, on the file of the Motor Accident Claims Tribunal(Additional District Court), Fast Track Court No.II, Madurai.

For Appellant

:Mr.J.S.Murali

For Respondents
1 to 4

:Mr.A.Haja Mohideen

For Respondent-5

:Notice dispensed with
as per order of this Court
dated 6.1.2010

JUDGMENT

Heard Mr.J.S.Murali, learned counsel appearing for the appellant/Insurance Company and Mr.A.Haja Mohideen, learned counsel appearing on behalf of the respondents 1 to 4 and perused the materials available on record.



2.This Civil Miscellaneous Appeal is directed against the award of the Motor Accident Claims Tribunal (Additional District Court), Fast Track Court No.II, Madurai in M.C.O.P.No.76 of 2005, dated 21.4.2008.

3.The claim petition was filed by the respondents 1 to 4 herein seeking compensation of Rs.7 lakhs. According to the claimants, On 18.07.2004, the deceased Anbu @ Anbazhagan was returning in a motor cycle from Sathuragiri to Madurai along with a Pillion rider Suralirajan. At that time, an auto belonging to the fifth respondent herein bearing Registration No. TN 67 Q 6238 came in a high speed in a rash and negligent manner and hit against the motor cycle. In the impact, he sustained injuries and immediately, he was admitted in Government Rajaji Hospital at Madurai, where, he took treatment from 18.7.2004 to 28.7.2004. Thereafter, he was shifted to C.T.Hospital on 28.7.2004 and he took treatment till 2.8.2004 and eventually, he succumbed to the injuries on 3.8.2004.

4.According to the claimants, at the time of accident, the deceased was only 33 years and he was running a workshop in the name and style of of 'M.P.S.Auto Works' and thereby earning a sum of Rs.250/- per day. However, due to the accident, his wife and minor children have lost the sole bread-winner.

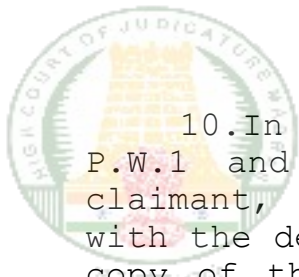
5.The claim Petition was opposed by the appellant/Insurance Company disputing the averments contained in the claim petition. It is their specific case that the driver of the auto was driving the vehicle in a moderate speed, but the deceased who came in a high speed, dashed against the auto. Since the deceased himself has invited the accident, neither the owner of the vehicle nor the appellant/Insurance Company is liable to pay compensation to the claimants.

6.Before the Tribunal, on behalf of the claimants, two witnesses were examined as P.W.1 and P.W.2 and Ex.P1 to Ex.P10 were marked. On the side of the appellant/insurance company, one Illangovan, driver was examined as R.W.1 and Ex.R1 judgment of the Criminal Court was produced.

7.After analysing the evidence adduced by the parties, the Tribunal has assessed the award at Rs.9,50,000/-, but awarded only Rs.7 lakhs, since the claim was restricted to Rs.7 lakhs.

8.The learned counsel for the appellant/Insurance Company urged that in the counter as well as during trial the appellant proved that the accident had taken place only due to the negligence of the deceased, but the Tribunal without considering the same, has held that the driver of the auto was responsible for the accident.

9.Per contra, the learned counsel for the respondents 1 to 4 justified and supported the finding of the Tribunal.



10. In the instant case, the first claimant examined herself as P.W.1 and examined one Surulirajan as P.W.2. According to the claimant, P.W.2 was the pillion rider, who was travelling along with the deceased at the time of accident. They also produced Ex.P1-copy of the First Information Report and Ex.P4-Charge sheet filed against the driver of the auto. P.W.2 has categorically stated that the driver of the auto was driving the vehicle in a high speed and hit against the two wheeler, due to which, the deceased sustained injuries and died. R.W.1 deposed that after seeing the deceased coming in a high speed, he slowed down and stopped the vehicle, however, the two wheeler had hit against the auto. In the impact, the auto was capsized and he also sustained injuries. This evidence of R.W.1 is improbable and it cannot be accepted.

11. It is seen that the driver of the auto was acquitted in the criminal case mainly on the ground that the deceased was not having valid driving licence at the time of accident. It is settled law that the finding of the Criminal Court is not binding on the Civil Court and the Tribunal has to independently assess the evidence to arrive at a finding on negligence. The basis of the argument of the counsel for the appellant is on the testimony of R.W.1 and the judgment of Criminal Court. Hence, I am unable to accept the contention of the learned counsel for the appellant. The finding on negligence by the Tribunal is only after analyzing the evidence of both P.W.2 and R.W.1. The trial Court has given valid reason to discard the evidence of R.W.1. Hence the finding on negligence given by the Tribunal is confirmed. There is no serious dispute over the quantum of compensation awarded by the Tribunal

12. For the foregoing reasons, the Civil Miscellaneous Appeal fails and it stands dismissed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their share in the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs, as per the ratio of apportionment made by the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

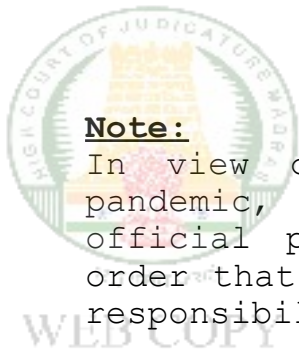
Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Additional District Judge/Fast Track Court No.II,
The Motor Accident Claims Tribunal,
Madurai.

Copy to: The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to Mr.J.S.MURALI, Advocate (SR-22897[F] dated 26/11/2020)

JUDGMENT MADE IN
C.M.A(MD)NO.1415 of 2008
24.11.2020

KMV(CO)
CS(09.12.2020) 4P 5C