



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.150 of 2009

and

M.P. (MD) No.1 of 2009

WEB COPY

The Branch Manager
National Insurance Company Ltd.,
Sivakasi

... Appellant/2nd Respondent

-vs-

1.Sooriya Kumari

2.A.Sakthivel

... 1&2 Respondents/Petitioners 1&2

3.C.Balamurugan

... 3rd Respondent/1st Respondent

[R3 was set ex parte)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order made in M.C.O.P.No.84 of 2005, on the file of the Motor Accident Claims Tribunal, Sub Court, Sivakasi, dated 01.11.2007.

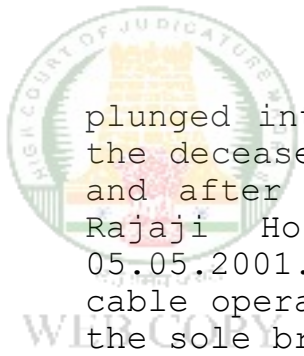
For Appellant : Mr.S.Kumar

For Respondents : Mr.S.M.Ananthamurugan for R1 & R2
R3 - *Ex Parte before the Tribunal*

J U D G M E N T

This civil miscellaneous appeal has been preferred by the Insurance Company questioning the Award, dated 01.11.2007, passed by the Motor Accident Claims Tribunal / Sub Court, Sivakasi, in M.C.O.P.No.84 of 2005.

2. The claim petition was filed by the respondents 1 and 2 / claimants seeking compensation of Rs.10,00,000/- on the death of their son Muthuvel. It is their case that on 25.04.2001, the deceased Muthuvel and his friends Deivakalanidhi and Senthilkumar were proceeding from Sivakasi to Courtalam in a motorcycle bearing registration No.TN67 T3084 owned by the third respondent and insured with the appellant - Insurance Company. The vehicle was driven by Senthilkumar and the deceased Muthuvel and Deivakalanidhi were travelling as pillion riders. When the motorcycle was nearing Silambarasan Kalmandabam on Srivilliputhur - Rajapalayam Road, the rider was so negligent in his driving and hence, the motorcycle



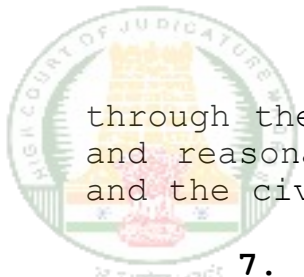
plunged into the road-side ditch and caused injuries. Thereafter, the deceased Muthuvel was taken to the Government Hospital, Sivakasi and after providing first-aid, he was referred to the Government Rajaji Hospital, Madurai and succumbed to the injuries on 05.05.2001. According to the claimants, their deceased son was a cable operator and his monthly earning was Rs.1,800/- and he was the sole breadwinner of the family.

3. In the counter filed by the appellant - Insurance Company, it is stated that the rider of the motorcycle was the brother of the insured of the offending vehicle. Since the vehicle was hired by the owner, they are not liable to pay any compensation. It is also stated that the rider was not having valid driving licence and it is the violation of policy conditions. It is further contended that the deceased was discharged from the Hospital and thereafter, died and hence, it was the natural death.

4. The claimants to establish their case let in oral and documentary evidence and on the side of the Insurance Company, R.W.1 was examined and Exs.R1 to R3 were marked.

5. With regard to the contention raised by appellant - Insurance Company that deceased did not die due to the accident, P.W.1 has deposed that though the accident happened on 25.04.2001 and he was taking treatment till 05.05.2001, since the Doctors lost hope of survival, they advised the claimants to take the deceased to home and on the same day, he succumbed to the injuries. In support of the evidence of P.W.1, Ex.P3 - Discharge Summary was produced to show that on the date of the discharge, the wounds were not healed. Therefore, the Tribunal rejected the contention of the appellant - Insurance Company in this regard and held that the deceased succumbed to the injuries sustained in the accident. Further, it was the case of the appellant - Insurance Company that since three persons travelled in a two-wheeler, it is the violation of the policy conditions. Accepting the case of the appellant - Insurance Company, while quantifying the compensation, the Tribunal directed the insured to pay the award amount to the claimants first and thereafter, recover it from the owner of the vehicle.

6. Insofar as the quantum is concerned, according to the claimants, the deceased died at the age of 22 years and he was earning Rs.1,800/- per month as a cable operator. The Tribunal fixed Rs.60/- per day and held that the monthly earning is Rs.1,800/-. Further, the Tribunal applied "13" multiplier taking note of the age of the mother of the deceased and deducted 1/3rd for his personal expenses and arrived at the loss of income at Rs.1,87,200/- (Rs.1,200/- X 12 X 13). In addition, the Tribunal awarded Rs.20,000/- for loss of love and affection. In total, the Tribunal awarded Rs.2,07,200/- along with interest at the rate of 7.5% per annum as compensation to the claimants. On going



through the records, I found that the award of the Tribunal is fair and reasonable, which does not warrant interference of this Court and the civil miscellaneous is liable to be dismissed.

7. In view of the above findings, the civil miscellaneous appeal is dismissed, as devoid of merits. Since the appeal is 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-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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

To:

The Subordinate Judge,
Motor Accident Claims Tribunal,
Sivakasi.

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

+1 CC to M/s.S.M.ANANTHA MURUGAN,Advocate (SR-25009[F] dated 10/12/2020)

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