



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 18.02.2021
CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
C.M.A(MD)No.1642 of 2010

WEB COPY

and
M.P(MD)No.3 of 2010 & C.M.P(MD)No.1530 of 2021

National Insurance Company Ltd.,
Sivakasi .. Appellant/Respondent 2
vs.

1.Samuthiram
2.Sudalai
3.Esakkimuthu
4.Subbulakshmi ..Respondent 1 to 4/Petitioner

(R4 declared as major vide
Judgment dated 18.02.2021)

5.A.P.Seeni Aliyar ..Respondent No 5/Respondent No 1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the fair and decretal order dated 05.11.2007 made in MCOP No.606 of 2006 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Tirunelveli.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondent : No appearance for R1 to R4
R5 - Died

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal, Principal District Judge, Tirunelveli, in M.C.O.P.No.606 of 2006 dated 05.11.2007, the Insurance Company has filed this appeal.

2.This is the case of the fatal accident. It is the case of the claimants that on 24.07.2004 at 1.15 p.m, the deceased Esakki was riding a motorcycle bearing registration No.TN-76-2563 on the Tenkasi to Madurai National Highways Road from north to south. When he was coming near Elathur Vilakku, a Maxi cab Mahindra van bearing registration No.TN-65-B-3753 belonging to the 5th respondent insured with the appellant came from the opposite direction, driven by its driver in a rash and negligent manner dashed against the motorcycle. In the accident, the deceased fell down from the motorcycle and sustained injuries on his back side of the head and fracture over his right leg. Immediately, he was taken to Tenkasi Government Hospital, where he died. The claimants are legal heirs of the deceased. Alleging that the accident had taken place due to the rash and negligent driving of the driver of the maxi cap van, the



claimants laid a petition, claiming compensation of Rs.5,29,500/-.

3.Resisting the claim, the appellant Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

WEB COPY

4.The claim petition was tried by the Tribunal and to substantiate the case, on the side of the claimants P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P10 were marked. On the side of the appellant/Insurance Company, R.W.1 to R.W.3 were examined and Exs.R1 and R2 were marked.

5.The Tribunal, after considering the oral and documentary evidence held that the driver of the van was responsible for the accident and awarded compensation of Rs.3,29,500/- along with interest at the rate of 6% p.a. Assailing the award, the appellant Insurance Company has filed the present appeal.

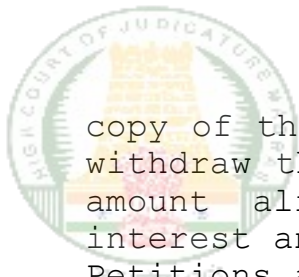
6.Heard the learned counsel appearing on either side and perused the materials available on record.

7.The appellant Insurance Company has filed this appeal only challenging the quantum and they have not disputed the manner of accident and their liability. Hence, it is not necessary to elaborate on other aspects.

8.From the perusal of the records, it is seen that the claimant examined the employer of the deceased as P.W.3 and marked salary certificate as Ex.P.9 to show that the deceased was earning Rs.5,000/- per month, however, the Tribunal has taken income at Rs.40,000/- per annum and arrived at loss of income at Rs.4,80,000/-, after deducting 1/3rd from which for his personal expenses, held that the claimants are entitled for Rs.3,20,000/- towards loss of income. In addition, Rs.2,000/- was awarded for funeral expenses; Rs.2,500/- for loss of estate and Rs.5,000/- towards loss of consortium and love and affection. In total, the Tribunal has awarded Rs.3,29,500/- along with interest at the rate of 6% per annum. I find no illegality or irregularity in the decision arrived at by the Tribunal and hence, it is confirmed.

9.The claim petition of the year 2006 and at that relevant point of time, the 4th claimant was minor and by now, she should have been become major. So, she is declared as major and the Tribunal is hereby directed to disburse her share.

10.In that view, 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 the award amount, as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accident Claims Tribunal,
(Principal District Court)
Tirunelveli.

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-6400[F] dated 22/02/2021)

C.M.A(MD)No.1642 of 2010

and

M.P(MD)No.3 of 2010 & C.M.P(MD)No.1530 of 2021

18.02.2021

SRK(CO)

KB(19.04.2021) 3P 5C