



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2021

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THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) .No.627 of 2009

and

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

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The Branch Manager,  
New India Assurance Co Ltd.,  
Palani

... Appellant/Respondent No.2

vs.

1.J.Nagarathinam

2.S.Mahalakshmi

3.V.Tamilselvi

... Respondets 1 to 3/

Petitioners 1 to 3

4.T.Murugesan

...4th Respondent/Respondent No.1

**Prayer:** The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 16.09.2008 made in M.C.O.P.No.160 of 2002 on the file of the Motor Accident Claims Tribunal, Sub Court, Palani.

For Appellant : Mr.B.Vijay Karthikeyan

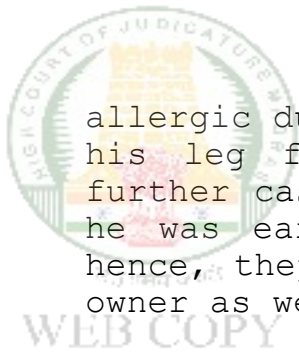
For R1 to R3 : Mr.P.Periasamy

### J U D G M E N T

The appellant herein challenges the award passed by the Motor Accident Claims Tribunal (Sub Court), Palani made in M.C.O.P.No.160 of 2002.

2. The respondents 1 to 3 herein are the mother and sisters of the deceased J.Kannan, who sustained injury in an accident that had taken place on 06.07.2001. The claimants would state that the deceased along with his brother-in-law Veluchmy was waiting at the bus stop at Reddiyarchatram - Dindigul Main Road. At that time, a Hero Honda bearing Registration No.TN 57 Y 9292 came in a rash and negligent manner and dashed against the deceased. Immediately, he was rushed to the City Hospital, Dindigul and he was treated as in-patient for about 13 days and on that day, they incurred expenditure at Rs.45,000/-.

3. It is further averred in the claim petition that even though the deceased was discharged from the hospital, he become



allergic due to the medicines administered during the treatment, for his leg fracture, eventually he died on 02.01.2002. It is the further case of the claimants that the deceased was 25 year old and he was earning Rs.4,000/- per month by doing tailoring work and hence, they are entitled for compensation of Rs.5,00,000/- from the owner as well as insurer of the offending vehicle.

4. The appellant filed a counter before the Tribunal to oppose the claim petition. The age, income and the manner of accident stated in the claim petition were disputed and denied by the appellant. It is stated that the rider of the motorcycle drove it very slowly and carefully, by observing the road traffic rules, but, the deceased had suddenly tried to cross the road, thereby voluntarily met with the accident. So, liability to be fixed on the Insurance Company.

5. During trial, brother-in-law of the deceased was examined as P.W.2 and he has spoken about the accident in the line of the averments made in the claim petition. The claimants also produced Ex.P1 / First Information Report, Ex.P2 / Charge Sheet and Ex.P5 / Judgment of the Criminal Court to show that the rider of the two wheeler was prosecuted and convicted by the Criminal Court. Ex.P3 is the Wound Certificate and Ex.P6 is the Medical Bills series. The appellant also examined one Rajendrdan as R.W.1. After analysing the evidence oral and documentary, the Tribunal came to the conclusion that the accident occurred due to the negligence of the driver of the two wheeler and awarded Rs.1,25,000/- along with interest at 7.5%. Questioning the award, the present appeal has been filed.

6. Mr.P.Vijay Karthikeyan, learned counsel for the appellant would submit that the deceased sustained only fracture in his legs and he was discharged from the hospital after recovery and he died after lapse of six months ie. on 02.01.2002. According to the learned counsel, no material was produced by the claimants to show that the deceased died in consequence of the injuries sustained in the accident and the dead body was also not subjected to postmortem. Therefore, the judgment of the Tribunal is to be set aside.

7. I am unable to agree with the submission of the learned counsel for the appellant for the reason that Ex.P1 and the evidence of P.W.2 would reveal that the deceased sustained injuries and fracture in the accident that had taken place on 06.07.2001. In the claim petition itself it has been categorically stated that the deceased developed allergy, due to the medicines administered during the treatment for the fracture sustained in the leg. The police investigated the crime and filed a final report against the driver and he was also convicted by the Criminal Court. So, there cannot be any dispute that the deceased sustained injury in the accident occurred on 06.07.2001. The medical bills and the wound certificate were also produced to establish, the deceased had health issues on



last. It is true that no postmortem was conducted for the deceased Kannan and the claimants failed to examine the Doctor to prove the averments in the claim petition. Even then, in my view, the claimants have established their case through other materials. The quantum appears to be reasonable.

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8. In the light of the above finding, I find no reason to over turn the conclusion reached by the Tribunal.

9. In fine, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Motor Accident Claims Tribunal,  
Sub Court,  
Palani.

Copy to:

The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.(2 Copies)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate ( SR-16982[F] dated 22/04/2021 )

**C.M.A. (MD) .No.627 of 2009**  
**20.04.2021**

KK(31.05.2021) 3P 5C