



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.12.2020

Delivered On : 20.01.2021

CORAM:

THE HONOURABLE **MR.JUSTICE G.ILANGO VAN**

C.M.A.(MD)Nos.521 and 522 of 2011

and

M.P.(MD)No.1 of 2011

in CMA(MD)No.521 of 2011

CMA(MD) No.521 of 2011

National Insurance Co.Ltd.,
Vigneswara Building,
Near Over Bridge,
No.7, Pudukottai Road,
Tiruchirapalli-620 020.

... Appellant / 2nd respondent

Vs.

1.Nallamuthu ... 1st Respondent / 1st Petitioner
2.R.Ramya ... 2nd Respondent / 2nd Petitioner
3.Minor.Geetha ... 3rd Respondent / 3rd Petitioner
(Minor represented by her mother
and natural guardian Nallamuthu
1st respondent)

4.Palaniammal ... 4th Respondent / 4th Petitioner
5.Kuppusamy ... 5th Respondent / 5th Petitioner
6.L.Saravana Kumar ... 6th Respondent / 1st Respondent
(Set ex-parte in Trial Court)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment made in M.C.O.P.No.488 of 2005, dated 09.02.2010 on the file of the Motor Accident Claims Tribunal - District Judge, Karur.

For Appellant : Mr.C.R.Krishnamoorthy
for Mr.N.S.Ramakrishna doss

For Respondents : No appearance for R1 to R5
: Exparte (vide EB) for R6

CMA(MD) No.522 of 2011

National Insurance Co.Ltd.,
Vigneswara Building,
Near Over Bridge,
No.7, Pudukottai Road,
Tiruchirapalli-620 020.

... Appellant / 2nd respondent



1.Ramathal ... 1st Respondent / 1st Petitioner
2.Lalitha Devi ... 2nd Respondent / 2nd Petitioner
3.Dhanabarathi Ram ... 3rd Respondent / 3rd Petitioner
4.Minor.Abirami
(Minor represented by her mother
and natural guardian Lalitha Devi
2nd respondent) ... 4th Respondent / 4th Petitioner
5.L.Saravana Kumar ... 5th Respondent / 1st respondent
(Set ex-parte in Trial Court)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment made in M.C.O.P.No.489 of 2005, dated 09.02.2010 on the file of the Motor Accident Claims Tribunal - District Judge, Karur.

For Appellant : Mr.C.R.Krishnamoorthy
for Mr.N.S.Ramakrishna doss

For Respondents : No appearance for R1 to R5
: Exparte (vide EB)

COMMON JUDGMENT

These Civil Miscellaneous Appeal are filed against the award, dated 09.02.2010, made in M.C.O.P.Nos.488 and 489 of 2005, on the file of the Motor Accident Claims Tribunal - District Judge, Karur.

2.The case of the claimants before the Tribunal is that the deceased Rajamani was riding a two wheeler bearing Registration No.TN-47-E-8163 along with one Chinnasamy, on 12.06.2005 from East - West direction on the Thoppampatti to Mathakodangipatti. When nearing the place of the occurrence, at about 6.30 p.m, a mini lorry bearing Registration No.TN-47-B-8575 was driven by its driver in a rash and negligent manner and dashed against the two wheeler, as a result of which, the deceased Rajamani died on the spot and the pillion rider viz., Chinnasamy sustained injuries. The deceased Rajamani was aged about 42 years at the time of accident and by doing agricultural work, she was earning Rs.20,000/- per month, apart from owning by power loom factory and hiring tempo van, she was earning Rs.60,000/- per month. The total monthly income was Rs.26,000/-. The claimants are the wife and children of the deceased and they are claiming compensation amount of Rs.20,00,000/-. The injured Chinnasamy claimed the compensation amount of Rs.5,00,000/- and during the pendency of the petition, he died. So, the legal representatives were added. In the accident, Chinnasamy sustained multiple



injuries. He was admitted in the hospital and underwent a surgery in Ganga Hospital, Coimbatore. He incurred Rs.1,50,000/- towards medical expenses. He was working as a Secretary at Vettaiyampalayam Primary Agricultural Society and was receiving Rs.10,000/- as salary.

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3. The case of the insurer of the vehicle is that the claim petition suffers from non-joinder of necessary party, since the owner of the two wheeler in which the deceased and Chinnasamy were riding and the Insurance Company were not added as parties. The other things were denied as false.

4. Before the Tribunal, on the side of the claimants, three witnesses were examined as P.W.1 to P.W.3 and 21 documents marked. On the side of the respondents, one witness was examined and three documents marked. Since both the petitions arose out of a single accident, a common enquiry was ordered and a common order was passed.

5. With regard to the negligence, the Tribunal came to the conclusion that it took place only due to the rash and negligent driving on the part of the first respondent vehicle's driver. With regard to the compensation, the claimants in M.C.O.P.No.488 of 2005 were awarded with Rs.8,36,000/-. The claimants in M.C.O.P.No.489 of 2005 were awarded in Rs.1,73,000/-. Challenging the award, the Insurance Company has filed these Appeals, mainly on the ground of negligence and compensation by filing separate Appeals. Since common question of fact and laws arose in both the appeals, common judgment is passed.

6. Regarding the occurrence, subsequent to the scene, the F.I.R, was registered and the copy was marked as Ex.P1. It reads that the two wheeler was driven by the deceased Rajamani, in which, Chinnasamy was a pillion rider. When nearing the place of occurrence, the vehicle that came in the opposite direction, hit against them. P.W.1 did not witness the occurrence directly P.W.3 was the eye witness. He would say that he witnessed the occurrence, in which, the deceased were riding in a two wheeler from East-West direction and at that time, a tempo van, which came in the opposite direction, hit against the two wheeler. It was suggested to him that he did not witness the occurrence. R.W.1 is the driver of the offending vehicle. He would say that only the rider of the two wheeler came in a rash manner and to avoid the accident, he stopped the vehicle, in spite of that, the two wheeler dashed against the Van. As I mentioned earlier, the two wheeler was proceeding from East-West direction and R.W.1 was from West-East direction and he was turning near the place of occurrence. The accident is noted on the southern edge of the road in Ex.P2, which suggest that R.W.1, without keeping his



left, went to the southern portion and hit the two wheeler, which was on its left hand side. So, the manner of the accident, as suggested is that only R.W.1 was driving rash and negligent manner and drove the vehicle. So, the finding of the Tribunal on this aspect, requires no interference and accordingly, it is confirmed.

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7. Regarding the compensation for the claimant in M.C.O.P.No.488 of 2005, to show the age of the deceased viz., Rajamani, except the post mortem certificate, no other document was available. So on the basis of the post mortem certificate, the Tribunal took the same as 45. So, in the absence of any other document that can be taken as correct. To prove the income, no documents have been produced except the land document and Permanent Registration Certificate (Ex.P9) and Form A3 Card (Ex.P10) of Geetha Tex. The Tribunal has found that in the absence of any document to prove the monthly income of the deceased and also considering the fact that even after the death of Rajamani, the agricultural operations and as well as the business of the Textiles, would have been continued by the claimant, so, notional income of Rs.7,000/- has been taken into account. So, after deducting 1/3rd amount, the multiplier was taken as 12 as per the dictum laid down in the Sarla Verma Case, and the total loss of income was estimated at Rs.7,56,000/- and also customary amounts were added. So, the total compensation of Rs.8,30,000/- was awarded. Considering the facts and circumstances of the case, I find that the assessment made by the Tribunal requires no interference, which appears to be just and reasonable.

8. Regarding the compensation of the deceased, Chinnaamy, the Tribunal took into account the medical expenses, loss of income for the treatment period, Transport Expenses and awarded Rs.25,000/- for disability and Rs.20,000/- for pain and sufferings and the total award of Rs.1,73,000/-. Since Chinnaamy died only after two years of the accident, it is also found that there is no nexus between the accident and the death. So, in the facts and circumstances of the case and as well as from the nature of the injury and the treatment undertaken by the deceased, I find that the quantum fixed by the Tribunal also appears to be just and reasonable, which requires no interference.

9. In the result, I find no merit in both the Appeals and they are liable to be dismissed and the same are dismissed. The award passed by the Tribunal in both the cases are confirmed. The appellant /Insurance company is directed to deposit the award amount with accrued interest and costs within a period of two months from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal may permit the claimants to withdraw their respective shares with interest and costs



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M.P(MD)No.1 of 2010

immediately, after filing proper petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Ls

To

1.The District Judge,
Motor Accident Claims Tribunal,
Karur.

2.The Section Officer-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to Mr.N.S.RAMAKRISHNA DOSS, Advocate (SR-1516,1517[F] dated
21/01/2021)

order made in
C.M.A. (MD) Nos.521 and 522 of 2011
20.01.2021

KM (26.02.2021) 5P 6C