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C.M.A(MD) Nos.721 and 722 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 04.02.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) Nos.721 and 722 of 2009

C.M.A(MD) No.721 of 2009

1.Charles ..Appellant/Petitioner

C.M.A(MD) No.722 of 2009

1.Paulraj
2.Vasantha
3.Rajasekar
4.Sornamala ...Appellants/Petitioners

vs.

1.Kolandaisamy

2.The National Insurance Company Limited,
Gopichettipalayam.

3.KasiRespondents/Respondents in both the C.M.As'

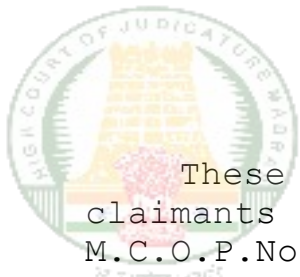
(Respondents 1 and 3 were set exparte in the Trial Court. Hence notice to them is dispensed with)

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988, against the Common judgment and Decrees made in M.C.O.P.Nos.1475 and 1476 of 2004, dated 21.7.2007, on the file of the Motor Accident Claims Tribunal(II Additional District Judge), Tirunelveli.

For Appellant/s : Mr.T.Selvakumaran
in both C.M.As'

For Respondent-2 : Mr.S.Srinivasa Raghavan
in both appeals

For Respondents : Notice Dispensed with
1 and 3 in both
appeals



COMMON JUDGMENT

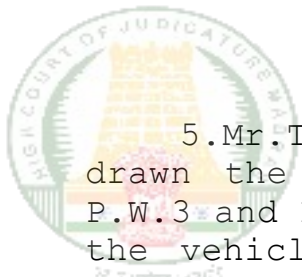
These Civil Miscellaneous Appeals have been filed by the claimants challenging the dismissal of their claim petitions M.C.O.P.Nos.1475 and 1476 of 2004 by the Motor Accident Claims Tribunal(II Additional District Judge),Tirunelveli.

WEB COPY

2.M.C.O.P.No.1475 of 2004 was filed by the injured claimant/Charles while in M.C.O.P.No.1476 of 2004 was filed by the legal heirs of the deceased Lakshmana Pandi. Both the deceased and injured were aged 24 years at the time of accident. It is their case that on 30.7.2004, at 4.00 p.m., the injured claimant was a pillion rider in the bicycle which was driven by the deceased Lakshmana Pandi. At that time, a lorry bearing Registration No.TCS 2781 belonging to the first respondent and insured with the second respondent, came in a high speed and hit against the bicycle. In the impact, both sustained injury, but, unfortunately the rider of the bicycle/Lakshmana Pandi, died in the hospital.

3.Immediately after the accident, P.W.2, who was the driver of an Auto came to the spot and took both the injured to the hospital. Ex.P1 First Information Report was registered at 10.00 a.m.,on 30.7.2004 based on the complaint given by P.W.2. During the investigation the Police seized the vehicle on 1.8.2004 and the driver of the lorry bearing Registration No.TCS 2781 was prosecuted before the Criminal Court.

4.The injured claimant examined himself as P.W.1. That apart, P.W.2 and P.W.5 were examined as eyewitness to the accident. As stated above, copy of the First Information Report was marked as Ex.P1. On behalf of the Insurance Company, it was contended that the vehicle was introduced to make a false claim as against the Insurance Company and the vehicle/Lorry bearing Registration No. TCS 2781 was not involved in the accident. In support of their case, Mr.Mathias, a Senior Assistant from the second respondent Insurance Company was examined as R.W.1 They have also examined the driver of the lorry bearing Registration No.TCS 2781 as R.W.2.In their evidence, they have stated that the above said vehicle was not involved in the accident. The Tribunal disbelieved the evidence of P.W.1, P.W.2 and P.W.5 on the ground that in Ex.P1, neither the type of the vehicle nor the Registration Number of the vehicle was given by P.W.2. According to the Tribunal, P.W.1 could not have seen the vehicle which came behind the bicycle and rammed the bicycle. It is further observed that the name of P.W.5 was not mentioned by P.W.2 in the First Information Report. Since the Tribunal disbelieved the testimony of the eye-witnesses, the claim petition was rejected.



5.Mr.T.Selvakumaran, learned counsel for the claimant/s has drawn the attention of this Court to the evidence of P.W.1 to P.W.3 and Ex.P1. It is his submission that mere non-mentioning of the vehicle number in the First information Report cannot be a ground to reject the claim petitions and the reasoning given by the Tribunal is liable to be set aside. I find force in the contention of the learned counsel for the appellants.

6.On perusing the evidence of P.W.1, P.W.2 and P.W.5, I am of the opinion that the reasoning given by the Tribunal for discarding their evidence cannot be sustained. Further, it is settled law that proceedings before the Motor Accident Claims Tribunal is summary in nature and hyper-technical approach cannot be applied to reach a conclusion. It is an admitted fact that based on the complaint given by P.W.2, a case was registered and during investigation, the Police found the involvement of the driver of the lorry and he was also prosecuted before the Criminal Court.

7.The claimants have produced the Rought Sketch, Observation Mahazar, Motor Vehicle Inspector's Report, Charge-sheet and Remand report as Ex.P13 to Ex.P21. Those documents would clearly prove that the offending vehicle was involved in the accident. Further, as stated above, the driver of the lorry was also prosecuted. Hence the finding on the negligence is set aside and it is held that the driver of the lorry is responsible for the accident.

8.Insofar as the quantum is concerned, P.W.1, who is the appellant/claimant in C.M.A(D)No.721/2009, has stated that he sustained fracture and he took treatment in a private hospital. P.W.4-Dr.Ramaguru after assessing the disability sustained by the claimant, has issued Ex.P14 stating that the injured sustained 40% permanent disability. Ex.P8 shows that the claimant paid Rs.26,000/-towards medical expenses. So this Court is of the opinion that it would be appropriate to award Rs.26,000/-towards medical expenses, Rs.40,000/- for permanent disability and another sum of Rs.9,000/- for pain and suffering and transport expenses. In total, the injured claimant in M.C.O.P.No.1475 of 2004(C.M.A(MD)No.721 of 2009) is entitled to a compensation of Rs.75,000/- with interest at the rate of 6% from the date of claim petition till the date of realisation.

9.It is seen from the records that the claimants in C.M.A(MD) No.722 of 2009 are the parents and brother and sister of the deceased. Though it is claimed that the deceased was earning a sum of Rs.4000/-p.m., but no document was marked in support of their case. So the income of the deceased is fixed at Rs.3000/- and after deducting one third amount towards the personal expenses of the deceased, his contribution to the family is taken



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as Rs.2000/-p.m. Taking note of the age of the deceased, '13' multiplier is adopted for assessing the loss of income, which comes to Rs.3,12,000/-(Rs.2000/- x 12 x 13 = Rs.3,12,000/-). In addition, Rs.5000/- is ordered for loss of love and affection and another sum of Rs.5000/- for funeral expenses and in total, this Court awards a sum of Rs.3,22,000/-, which is rounded off to Rs.3,20,000/- with interest at the rate of 6% p.a., from the date of claim petition till the date of realization. Since the appellants 3 and 4, who are the brother and sister of the deceased are not dependant on the deceased, they are not entitled for any compensation. The appellants 1 and 2, who are the father and mother of the deceased are entitled to receive the above said award amount equally.

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10.In the result, this Civil Miscellaneous Appeal is allowed. The second respondent Insurance Company is directed to deposit the the award amount of Rs.75,000/-along with interest at the rate of 6%p.a., from the date of claim petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant/appellant is permitted to withdraw the award amount, together with accrued interest and costs, by filing formal application before the Tribunal. No costs.

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11.In the result, this Civil Miscellaneous Appeal is partly allowed. Since the appellants 3 and 4, who are the brother and sister of the deceased are not the dependants of the deceased they are not entitled for any compensation and accordingly, the appeal in respect of appellants 3 and 4/brother and sister, are dismissed. The second respondent/Insurance Company is directed to deposit the award amount of Rs.3,22,000/- along with interest at the rate of 6% pa., from the date of claim petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants 1 and 2/appellants 1 and 2 herein are permitted to withdraw the award amount equally with proportionate accrued interest and costs by filing formal application before the Tribunal. No costs.

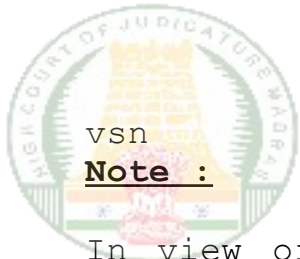
Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

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

1.The Motor Accident Claims Tribunal,
(II Additional District Judge),
Tirunelveli.

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

+2 CC to M/s.T.SELVA KUMARAN, Advocate (SR-3574 & 3575[F] dated 05/02/2021)

+2 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-3431 & 3432[F] dated 05/02/2021)

COMMON JUDGMENT MADE IN
C.M.A(MD) Nos.721 and 722 of 2009
04.02.2021

se (CO)

TR(05.03.2021) 5P 8C