



WEB COPY

C.M.A.(MD) No.760 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.(MD) No.760 of 2010

and

M.P.(MD) No.2 of 2010

The Divisional Manager
The New India Assurance Co. Ltd.
242-B, Kamarajar Salai
Madurai

... Appellant

-vs-

1.Paramasivam (Died)

2.Kumaresan

3.Mallakkal

4.Bommaraj

5.Sivapriya

... Respondents

[R4 & R5 are declared as majors
vide Judgment dated 11.03.2021.
R3 to R5 are brought on record as
L.Rs. of the deceased R1 vide order
dated 09.02.2012 and made in M.P.
(MD) Nos.1 to 3 of 2012 in C.M.A.
(MD) No.760 of 2010]

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 21.10.2009 in M.C.O.P.No.1161 of 2005, on the file of the Motor Accident Claims Tribunal / IV Additional Sub Court, Madurai.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents : R1 - Died
Mr.R.Rajamohan for R2
No appearance for R3 to R5

J U D G M E N T

This civil miscellaneous appeal is by the Insurance Company challenging the Award, dated 21.10.2009, passed in M.C.O.P.No.1161 of 2005, by the Motor Accident Claims Tribunal / IV Additional Sub

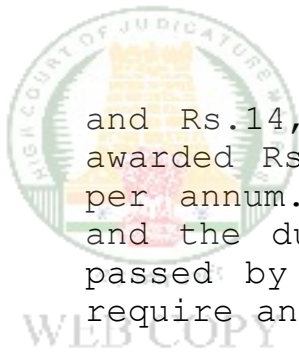


2. The claim petition was originally filed by the first respondent herein seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a motor vehicle accident occurred on 15.03.2005. The case of the first respondent is that on the date of occurrence, he travelled in a Mini Auto bearing registration No.TN60 Z5610 owned by the second respondent and insured with the appellant - Insurance Company, along with his goods from Ottanchathiram to Andarasanpatti. Since the Auto was driven in a rash and negligence manner, it capsized and the claimant sustained injuries.

3. The claim was opposed by the appellant - Insurance Company contending that the injured claimant along with two other persons travelled as passengers in a goods vehicle. Since policy conditions have been violated, no liability can be fixed on the insurer of the vehicle.

4. The original claimant examined himself as P.W.1 and also examined the driver of the Auto as P.W.4. In their evidence, it has been categorically stated that the injured claimant travelled as a loadman in the Auto. It appears that in the First Information Report and in Section 161 Cr.P.C. Statement, the driver of the Auto (P.W.4) has stated that the injured claimant travelled in the Auto to purchase cattle. Taking advantage of this contradiction, the appellant - Insurance Company contended that the injured was not a loadman at the relevant time. The Tribunal rejected the contentions of the appellant - Insurance Company on the ground that the signature in the statement is disputed and there are variations in the signature of the driver of the Auto and held that the appellant - Insurance Company is liable to pay compensation.

5. The claimant, in his evidence, has stated that he took treatment as inpatient at Christian Mission Hospital from 15.03.2005 to 28.03.2005 and thereafter, he was admitted in Vijayalakshmi Clinic at Aundipatti, where he took treatment from 30.03.2005 to 25.06.2005. Medical records were produced and marked as Exs.P2 and P12. P.W.3 - Doctor found that the claimant has suffered 60% disability and issued Disability Certificate (Ex.P13). It is not disputed that the claimant's left leg below the knee was amputated due to the injuries sustained in the accident. The claimant further stated that he was 27 years old at the time of the accident and he was earning Rs.5,000/- per month as a loadman. However, the Tribunal has fixed his notional income at Rs.3,000/- and by applying multiplier "16" awarded Rs.3,45,600/- towards loss of income. In addition, the Tribunal awarded Rs.2,000/- towards transportation expenses, Rs.25,000/- towards pain and suffering, Rs.2,500/- towards extra-nourishment



and Rs.14,565/- towards medical expenses, in toto, the Tribunal awarded Rs.3,89,665/- together with interest at the rate of 7.5% per annum. Considering the disability suffered by the claimant and the duration of treatment, in my considered view, the award passed by the Tribunal is fair and reasonable and it does not require any interference of this Court.

6. It is to be noted that a copy of the Legal Heirship Certificate issued by the Tahsildar, Aundipatti, submitted at the time of bringing the legal heirs of the deceased first respondent on record reveals that the respondents 4 and 5 were minors and now, they have attained majority. So, the respondents 4 and 5 are hereby declared as majors.

7. In fine, the civil miscellaneous appeal fails and it is dismissed. 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 Judgment. On such deposit, the third respondent / wife is permitted to withdraw Rs.2,89,665/- and the respondents 4 and 5 are permitted to withdraw Rs.50,000/- each, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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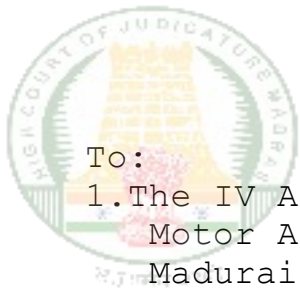
/ /2021

Sub Assistant Registrar(CS)

KRK

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:

1.The IV Additional Sub Judge,
Motor Accident Claims Tribunal,
Madurai

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

+1 CC to Mr.R.RAJAMOHAN, Advocate (SR-10691[F] dated 12/03/2021)

+1 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate (SR-10968[F] dated
15/03/2021)

C.M.A.(MD) No.760 of 2010
and
M.P.(MD) No.2 of 2010
11.03.2021

KM(25.05.2021) 4P 6C