THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

**C.M.A.No.776 of 2020**
**and**
**C.M.P.No.4889 of 2020**

The Branch Manager,
National Insurance Company Limited,
Ambattur Branch, Vijaya Plaza, C-32, 2nd Floor, ,
2nd Avenue, Thirumangalam,
Anna Nagar, Chennai – 600 040.
C/o. The Divisional Manager,
National Insurance Company Ltd.,
Divisional Office, No.9, Infantry Road,
Near Alankar Theatre, Vellore – 632 002. ...Appellant

Vs.

Nagooran (died)

1.Kasiyammal

2.Chitra

3.Minor Kousalya

4.Minor Naveen

[Minor respondents 3 and 4 represented by their next friend and mother 2nd respondent]

5.M/s.Gnanambal Transport,
No.95/2, P.H.Road,
Chennai – 600 084. ...Respondents

**Prayer**: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 27.08.2019 made in MCOP.No.23 of 2016 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Hosur.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.C.Prabakaran for R1 to R4

**JUDGMENT**

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

The Insurance Company is on appeal against the award of a sum of Rs.20,15,000/- as compensation for the death of one Mathiyazhagan in the motor accident that occurred on 03.02.2015.

**2.** Claiming that the accident occurred when an un-identified vehicle suddenly slowed down without any indication forcing the deceased to dash against the said vehicle from behind. As a consequence of which the deceased suffered fatal injuries. The claimants further contended that the deceased was earning a sum of Rs.20,000/- per month. Therefore, they are entitled to a compensation of Rs.50,00,000/-, since they lost their only financial support.

**3.** The Insurance Company resisted the claim contending that the accident occurred due to the rash and negligent driving of the deceased himself and the Insurance Company being the insurer of the lorry that was driven by the deceased himself, as an employee, is bound to indemnify the owner of the vehicle for the award passed under the Motor Vehicles Act.

**4.** The Tribunal recorded that the accident was caused due to the negligent driving of the deceased. The Tribunal however fastened the liability on the Insurance Company on the ground that as an insurer of the lorry driven by the deceased, who was employed with the insured, the Insurance Company is liable to indemnify the 1st respondent owner of the vehicle. Aggrieved the Insurance Company is on appeal.

**5.** We have heard Mr.D.Bhaskaran, learned counsel appearing for the appellant and Mr.C.Prabakaran, learned counsel for the respondents 1 to 4. The owner of the lorry viz., 5$^{th}$ respondent herein remained *exparte* before the Tribunal, hence notice to it is dispensed with.

**6.** Mr.D.Bhaskaran, learned counsel appearing for the Insurance Company would vehemently contend that having found negligence on the part of the deceased himself, the Tribunal erred in fastening the liability on the Insurance Company.

**7.** Unable to counter the submissions of Mr.D.Bhaskaran on the legality of it, Mr.C.Prabakaran, learned counsel appearing for the respondents/ claimants would submit that since it is an admitted case of workmen, the Insurance Company would atleast be liable to pay the compensation payable under the Employees Compensation Act.

**8.** Even in the counter filed before the Tribunal, the Insurance Company accepted its liability to pay compensation under the Employees Compensation Act. If calculated under the Employees Compensation Act the compensation payable would be as follows:-

| | | |
|---|---|---|
| Name of the Deceased | : | Mathiyazhagan |
| Age of the Deceased | : | 38 years |
| Avocation | : | Lorry Driver |
| Date of accident | : | 03.02.2015 |
| Factor for age 38 years | : | 189.56 |
| Wages-ceiling under Employees Compensation Act : Compensation: | | Rs.8,000/- p.m. |
| $\frac{50}{100} \times 189.56 \times 8000$ | = | Rs.7,63,240/- |
| Interest | : | 12% |

**9.** In view of the above, the appeal is **partly allowed** and the award is reduced to Rs.7,63,240/- with interest at 12% from the date of claim petition till date of payment. No costs. Consequently, the connected miscellaneous petition is closed.

**10.** It is stated that 50% of the compensation awarded by the Tribunal has been deposited by the Insurance Company. The Insurance Company will have twelve (12) weeks time to deposit the balance, if any, as per the modified award. If there is any excess available with the Tribunal, the same shall be repaid to the Insurance Company. The award amount is apportioned as follows:-

> *The 1st respondent/ mother of the deceased will take a sum of Rs.1,00,000/- with proportionate interest;*
>
> *The 2nd respondent/ wife of the deceased will take a sum of Rs.2,63,000/- with proportionate interest and*
>
> *The two minor children viz., respondents 3 and 4 will take a sum of Rs.2,00,000/- each with proportionate interest.*

**11.** The major claimants are permitted to withdraw their share of compensation along with proportionate interest. The shares of the minor claimants with accrued interest shall be kept in a Fixed Deposit in a Nationalized Bank, with auto renewal clause, till they attain the age of majority.

**(R.S.M.,J.)** **(K.G.T.,J.)**
03.03.2023

dsa

Index :Yes/No
Internet :Yes/No
Neutral citation :Yes/No
Speaking order/Non-Speaking order

To:-

The Additional District Judge,
Motor Accident Claims Tribunal,
Hosur.

**R.SUBRAMANIAN, J.**
**and**
**K.GOVINDARAJAN THILAKAVADI, J.**

dsa

**C.M.A.No.776 of 2020**

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