

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.1061 of 2015
and M.P.No.1 of 2015

The New India Assurance Co., Ltd.,
Mahalakshmi Chamber,
2nd Floor, 9/2 M.G.Road,
Bangalore

...Appellant / 2nd Respondent

vs.

1.Uma
2.Minor Saranya
3.Minor Divya
4.K.Krishnan
5.Tamilarasi
(2nd & 3rd respondents minors
rep.by their next friend and
mother Uma, 1st respondent herein)

... Respondents/Petitioners
1 to 5

6.The Managing Partner
M/s.Transsystem Logistics International
Limited, 11th Mile, Tumkoor Road,
Madhavara Village, Neelamangalam
Taluk, Bangalore District.

... 6th Respondent /
1st Respondent

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 12th day of April 2006 made in MCOP No.1686 of 2004 on the file of Motor Accident Claims Tribunal (I Additional District Court), Salem.

For Appellant : Mr.S.Manohar

JUDGMENT

The appeal has been preferred by the insurance company against the compensation of Rs.4,89,000/- awarded by the tribunal to the respondents for the death of one K.Sekar aged about 31 years, driver cum coconut business alleged to be earning a sum of Rs.5,000/- per month who died in the accident occurred on 02.09.2004 while he was travelling in a mini-door auto which was hit by the lorry insured with the appellant/insurance company.

2. Heard Mr.S.Manohar, learned counsel appearing for the appellant/insurance company who would argue only on the part of the negligence. He would submit that as per Ex.R1, the sketch, the accident had occurred because of the negligence on the part of the driver of the mini-door auto and RW1 also explained about the manner of accident.

3. A perusal of the records would show that there was a collusion between the mini-door auto and the lorry insured with the appellant/insurance company. PW2, eye-witness had deposed how the accident occurred and according to him, it is due the negligence on the part of the driver of the lorry insured with the appellant/insurance company. Ex.P1 - FIR has been registered against the driver of the lorry and Ex.P4 - charge sheet is also filed against the driver of the lorry. RW1 did not chose to file any complaint before the police. If really the driver of the mini-door auto alone was responsible for the accident, nothing prevented RW1 to give the complaint. Therefore, it is clear that the accident occurred only because of the negligence on the part of the driver of the lorry.

4. Even though RW1 spoke about the negligene on the part of the driver of the min-auto and relied upon Ex.R1 - sketch, the said document was ignored by the tribunal stating that the author of the document, the inspector of police was not examined. Moreover, the said document was not exhibited before the criminal court. Therefore, the tribunal rightly ignored Ex.R1 and based on PW2's evidence and also the FIR and chargesheet filed in the above cases, came to the conclusion that the driver of the lorry insured with the appellant/insurance company alone was responsible for the accident and the same cannot be interferred with. Therefore the said finding is confirmed. As there is no question about the quantum of compensation awarded by the tribunal before this Court, the same cannot be interferred by this Court. Appeal fails.

5. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant/insurance company is directed to deposit the entire award amount, alongwith interest and costs, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are permitted to withdraw the same, after adjusting the amount already withdrawn, if any, on the basis of ratio fixed by the tribunal.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

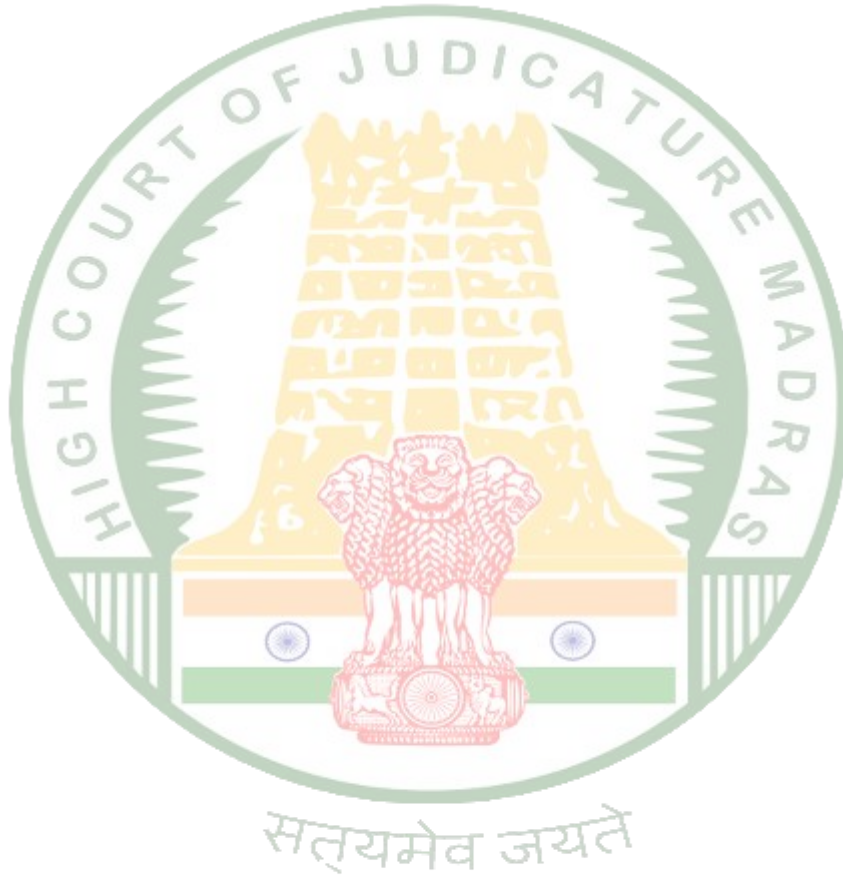
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To

The I Additional District Judge,
Motor Accident Claims Tribunal,
Salem.

CMA No.1061 of 2015

TM (CO)
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