

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.1051 of 2016
and
C.M.P.Nos.7985 and 7986 of 2016

Reliance General Insurance Company Ltd.,
Shri Lakshmi Complex 1st Floor,
Bharathi street, Omalur Main Road,
Swarnapuri, Salem. Appellant/2nd Respondent

Vs.

1. A.Gopalakrishnan,
S/o K.S.Arthanarisami Chettiar
2. G.Eswaramoorthy,
S/o A.Gopalakrishnan
3. Minor G.Nivedadevi
Rep. by her N.F. 1st petitioner
A.Gopalakrishnan Respondents 1 to 3/Petitioners
4. B.Ravichandran,
S/o Bangaru Respondent 4/1st Respondent
5. V.Prabakarnatha
S/o Vishwanhan Respondent 5/3rd Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree dated 05.03.2014 made in M.C.O.P.No.692 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Salem.

For Appellant : Mr.S.Arunkumar

For respondents : Dr.P.Jagadeesan
for R1 to R3

J U D G M E N T

(Order of the Court was made by HULUVADI G. RAMESH, J.)

This Appeal is filed by the appellant/Insurer against the award passed by the Motor Accident Claims Tribunal, (I Additional District Judge, Salem) in M.C.O.P.No.692 of 2009 dated 05.03.2014.

2. It is a case of fatal accident. On 14.12.2008 at about 8.15 p.m., while one Gopalakrishnan was proceeding in his motorcycle along with his wife and minor daughter on the Periyar over bridge, one Tata Sumo car bearing Registration No.TN-25-Y-1144, driven in a rash and negligent manner dashed against the motor cycle, due to which the rider as well as the other persons travelling in the motor cycle were thrown down. In the said accident, the wife of Gopalakrishnan by name Thiriveni who was the pillion rider suffered grievous injuries and succumbed to the same and died on the way to hospital.

3. The claimants, who are the husband and children of the deceased Thiriveni filed claim petition in M.C.O.P.No.692 of 2009 seeking a compensation of a sum of Rs.25,00,000/-. The deceased Thiriveni's husband has filed a separate Claim Petition in M.C.O.P.No.693 of 2009 claiming a compensation of Rs.7,00,000/- for the injuries said to have been sustained by him in the said accident and another M.C.O.P.No.694 of 2009 has also been filed by the minor daughter of the deceased Thiriveni namely, G.Niveda Devi represented by next friend A.Gopalakrishnan, claiming a compensation of a sum of Rs.7,50,000/- for the injuries said to have been sustained by the minor Niveda Devi in the said accident. The Tribunal conducted a joint trial of all the three Claim Petitions and passed a common order.

4. The deceased was aged about 38 years at the time of accident and she was said to be doing export business and she was earning more than Rs.1.5 lakhs to Rs.2 lakhs per annum. In support of the claim, the husband of the deceased/ first claimant examined himself as P.W.1 and one Chandrasekar was examined as P.W.2 and one Doctor Rajamanickam was examined as P.W.3 and Exhibits P1 to P.38 were marked. Neither any oral evidence was adduced nor any document was marked on the side of the respondents. The Tribunal, after taking note of the oral and documentary evidence held that the accident had happened only due to rash and negligent driving on the part of the driver of the Tata Sumo car and ordered the 1st and 2nd respondents therein who are the 4th respondent and appellant herein, jointly and severally liable to compensate the claimants and deposit the award amount of Rs.22,19,600/-.

5. The appellant /Insurer has filed this Appeal before this Court against M.C.O.P.No.692/2009 questioning the liability on the ground that there were three persons riding on the motor cycle and as such due to the violation of the policy condition by the motorcyclist, the liability cannot be fastened on the Insurer of the Tata Sumo car in question and also contended that the accident was due to the negligence on the part of the husband of the deceased.

6. Heard the learned counsel appearing for the appellant/Insurer and the learned counsel appearing for the claimants/respondents.

7. The factum of the accident is not in dispute and it is the Tata Sumo vehicle, which was insured with the appellant Insurance Company dashed against the motorcycle and it is not the case of the insurer that the motor cycle dashed against the Tata Sumo car. Further, the F.I.R was also registered as against the driver of the Tata Sumo car. In these circumstances, the contention that the accident was due to the negligent driving on the part of the husband of the deceased, cannot be sustained. On perusal of the order passed by the Tribunal and the other materials available on record, we are not inclined to entertain the appeal on the point of negligence. Further, the quantum of compensation awarded by the Tribunal cannot also be said to be on the higher side as the oral and documentary evidence adduced by the claimants, which is not controverted by the respondent/Insurer, substantiate the same. Further the quantum has also not been disputed by the insurer and accordingly, the same is confirmed.

8. For the reasons aforesaid, the civil miscellaneous appeal is dismissed as follows:-

- (i) The award of the Tribunal granting a compensation to the tune of Rs.22,19,600/- is confirmed.
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The appellant/Insurance Company is directed to deposit the award amount along with accrued interest within a period of three months from the date of receipt of a copy of this order.
- (v) On such deposit, the claimants are permitted to withdraw their proportionate share as apportioned by the Tribunal.
- (vi) The share of the minor 3rd claimant/3rd respondent herein shall be invested in Fixed Deposit in any one of the Nationalised Banks initially for a period of three years and the same shall be renewed periodically till she attains majority. The interest accrued on the share of

the minor 3rd claimant shall be paid to the 1st respondent/ father of the minor 3rd claimant once in three months till the 3rd respondent/ 3rd claimant attains majority.

(vi) Consequently, connected C.M.P.No.7986 of 2016 is closed.

(vii) Since C.M.P.No.7202 of 2016 filed to condone the delay of 465 days in representing the appeal is allowed today and the Civil Miscellaneous Appeal is taken up and disposed of today itself, C.M.P.No.7985 of 2016 which is filed to condone the delay of 45 days in filing the appeal, is also allowed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

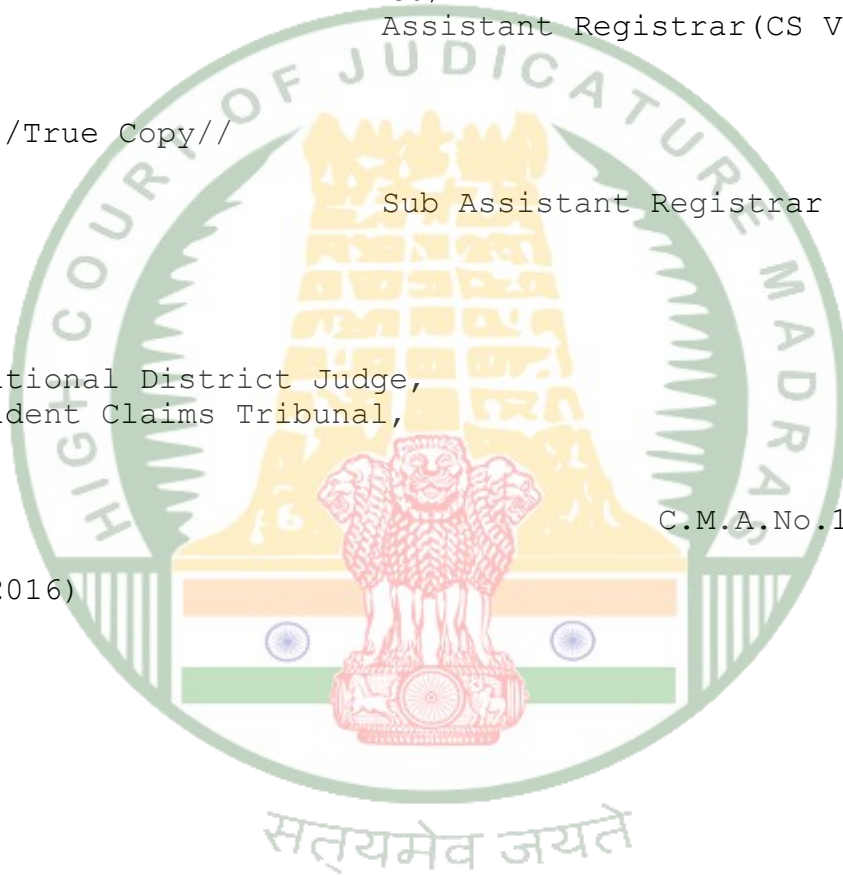
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To

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

C.M.A.No.1051 of 2016

RSK(CO)
CA(23/06/2016)



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