

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.10.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2318 of 2016  
& C.M.P.No.16311 of 2016

Royal Sundaram Alliance Insurance  
Company Limited,  
1<sup>st</sup> Floor, Sri Krishna Plaza,  
N.Natchippa Street,  
Erode-638 001.

.. Appellant

*Versus*

1.Sarangapani  
2.Tamil Selvi  
(2<sup>nd</sup> respondent minor represented  
by mother and next friend 1<sup>st</sup> respondent)  
3.Subramani  
4.Ramathal  
5.Raghupathi  
6.Renuga

.. Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 13.04.2016 made in M.C.O.P.No.314/2011 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge No.III, Dharapuram), Tiruppur District.

For Appellant : Mr.N.Vijayaraghavan

**J U D G M E N T**

The Civil Miscellaneous Appeal, filed by the appellant/Insurance Company, is directed against the correctness of the impugned award dated

13.04.2016 made in M.C.O.P.No.314/2011 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge No.III, Dharapuram), Tiruppur District.

2.According to the claimants, on 30.06.2010, at about 05.30 p.m., when the deceased was riding the motor cycle bearing Registration No.TN 33 Y 5272 from Dharapuram to Dhalavaipattinam, a lorry bearing Registration No.AP 31 X 8133, driven by its driver in a rash and negligent manner, dashed against the Motor cycle. Due to the sudden hit of the lorry, the deceased was thrown away from the motor cycle and he sustained multiple grievous injuries all over the body. He was immediately taken to Dharapuram Government Hospital and thereafter he was referred to CMP Hospital, Coimbatore. But he succumbed to death on the way to hospital. According to the claimants, the accident had happened due to the rash and negligent driving of the driver of the above said lorry.

3.Learned counsel appearing for the appellant/Insurance Company would submit that the learned Tribunal has failed to appreciate the oral and documentary evidence on the aspect of negligence, which clearly showing that the deceased was entirely responsible for the accident. She would further submit that F.I.R. initially lodged against the driver of the lorry, was ultimately

closed as mistake of fact after being found that the entire accident was due to the negligence of the deceased himself and that therefore the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

4.This Court hardly finds any substance in the contention made by the learned counsel for the appellant. The reason is that the finding given by the learned Tribunal is fully on the basis of the evidence given by the eye witness, who was examined as P.W.2. It is not in dispute that the deceased while driving his motor cycle, died due to the road accident caused by the lorry. This could be seen from the registration of F.I.R. by the Dharapuram Police Station in Crime No.2144/2010 for the offence under Sections 279 and 304(A) of I.P.C. At this juncture, it is relevant to mention the vital aspect that if it is the case of the Insurance Company that Dharapuram Police Station, who had registered the case against the driver of the offending lorry, has not found negligent on the driver of the lorry, no step whatsoever has been taken by the appellant to produce the copy of the report filed by the Dharapuram Police Station observing that the accident had occurred due to the carelessness of the deceased. On the contrary, learned Tribunal, having taken into account the manner of accident stating that while the deceased was driving his motor cycle, after being hit by the lorry, was taken to Dharapuram Government Hospital and subsequently shifted to CMP Hospital, Coimbatore and there he was succumbed

to death, has clearly rendered its finding accepting the evidence of P.W.2. Moreover, P.W.1/wife of the deceased, in her proof affidavit, has made out the case that the accident had happened only due to the rash and negligent driving of the driver of the offending lorry. The copy of the deposition, including the cross examination, produced before this Court by the learned counsel appearing for the appellant does not show any light whatsoever with regard to the defect indicated by the learned counsel appearing for the appellant so as to rule out the negligence part. P.W.1, who was also examined in support of the evidence, given by P.W.2, has also consistently and uniformly spoken about the manner of accident stating that the deceased died due to the rash and negligent driving of the driver of the offending lorry. Therefore, when the finding given by the learned Tribunal with regard to the manner of accident, clearly has answered against the Insurance Company holding that the offending vehicle has caused the accident and has saddled the liability on the part of the insurance company, since the same has been insured with the third respondent therein/appellant herein, this Court finds that the Insurance Company/appellant herein is vicariously liable for the driving made by the driver of the offending vehicle namely the lorry, which has caused the accident. Therefore, this Court is not able to find any merit in the contentions made by the learned counsel for the appellant with regard to the liability aspect.

5.As it is the case of death caused to the sole bread winner, aged about

45 years, who was working as a Load Man, earning a sum of Rs.6,000/- as notional monthly income, this Court finds that there is an error committed by the Tribunal on failure to add atleast 15% of the actual salary, which should have been added towards the future prospects.

6.Accordingly, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, Connected miscellaneous petition is closed.

7.Since the learned counsel for the appellant submitted that the appellant has deposited Rs.25,000/- towards statutory deposit, the balance amount is directed to be deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is for the claimants to move a petition before the learned Tribunal for withdrawing of the said amount.

**17.10.2016**

Index : Yes / No  
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To

- 1.The Motor Accidents Claims Tribunal,  
(Additional District Judge No.III, Dharapuram),  
Tiruppur District.
- 2.The Section Officer, V.R.Section,  
High Court, Madras.

T.RAJA, J.

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