

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

C.M.A.No.2741 of 2016
and C.M.P.No.19788 of 2016

Royal Sundaram Alliance
Insurance Co. Ltd.,

No.113/114, Sir Theyagaraya Road,
4th Floor, Meena Kamapla Arcade,
T.Nagar, Chennai - 17.

... Appellant / 2nd respondent

versus

1. Krishnaveni
2. Serriappan
3. S.Priyanka
4. Minor Monisha
5. Selvam

... Respondents 1 to 4/Petitioners
(5th respondent remained ex parte)

Appeal filed under Section 173 of Motor Vehicles Act, 1989,
against the Judgment and Decree dated 20.01.2016 made in
M.A.C.T.O.P.No.491 of 2014 on the file of the Motor Accident
Claims Tribunal (II Additional District Judge) at Poonamallee.

For Appellant : Mr.M.Krishnamoorthy
For R1 to R4 : Mr.E.Terry Chellaraja

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the
Insurance Company, challenging the liability as well as the
quantum of compensation.

2. The deceased, by name, S.Karthik, aged about 22 years,
employed as a Lorry Driver, earning a sum of Rs.15,000/- per
month, suffered a fatal death on 08.02.2014, while he was
driving a tipper lorry.

3. It is the case of the petitioners that there was a
parked lorry on the left side of the road, which was parked
without any indicator lights (giving indication to the moving
vehicles) and only because of exclusive negligence on the part
of the parked vehicle, this accident had taken place.

4. The Tribunal, on considering the oral and documentary evidence, fixed negligence on the part of the parked lorry to the extent of 90% and 10% on the part of the deceased and thus, the apportionment of the liability was made at 90% on the part of parked lorry and 10% on the part of the deceased.

5. Challenging the findings on negligence and quantum of the compensation, the Insurance Company has preferred this appeal.

6. The learned counsel appearing for the appellant - Insurance Company would contend that the Tribunal ought not to have relied upon the evidence adduced on the side of the claimants, namely, P.W.2 - Sathyaseelan, who stated that the parked vehicle was without sufficient indicator light and signal.

7. The learned counsel appearing for the respondents would submit that the First Information Report, which was preferred at the earliest point of time, which leaves no scope for chance for embellishment/afterthought, should be relied upon by the Tribunal. If the averments in the First Information Report is relied upon, 10% of the negligence fixed on the part of the deceased would not have been fixed by the claims Tribunal.

8. A perusal of the First Information Report, which finds a place in para 8 of the award, would go to show that the vehicle had been parked on the left side of the road, without any signal/parking light. Therefore, there is no reason to discard the averments made in the First Information Report, which was preferred at the earliest point of time, when there could not have been any opportunity for afterthought leading to incorporation of any false averments/exaggerated statements.

9. The contention of the learned counsel for the appellant is that even assuming that the vehicle had been parked without any parking light, if the deceased had been careful in driving the vehicle, this accident could have been avoided and there is no necessity to move out of the main road and come to the left side of the road, thus, invited the accident. The said contention has been already accepted by the claims Tribunal and hence, 10% of negligence was fixed on the part of the deceased and therefore, it is a case where no interference is called for and the finding on negligence is confirmed.

10. So far as the compensation of quantum is concerned, a sum of Rs.11,55,000/- has been awarded and deducting 10%, i.e. Rs.1,15,500/- towards 10% negligent on the part of the deceased, a sum of Rs.10,39,500/- has been awarded with the following break-up details:

Loss of income	-	Rs.10,88,000/-
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Cremation expenses	-	Rs.	15,000/-
Transport expenses	-	Rs.	10,000/-
Loss of love and affection	-	Rs.	40,000/-
Loss of articles	-	Rs.	2,000/-
Total	-	Rs.	11,55,000/-

10.1. Observing that there are four claimants, fixing the monthly income at Rs.8500/- deducting 1/3rd towards personal expenses and fixing the age of the deceased as 21 and adopting the multiplier of '16', the loss of dependency has been assessed at Rs.10,88,000/-. This calculation is obviously incorrect as the age of the deceased alone is relevant in fixing the multiplier. When the age of the deceased is 21, multiplier of 18 has to be adopted. Moreover future prospective increase in income has not been considered. Hence, the award cannot be said to be excessive.

11. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 20.01.2016 passed in M.A.C.T.O.P.No.491 of 2014 by the Motor Accident Claims Tribunal (II Additional District Judge) at Poonamallee.

12. The Insurance Company is directed to deposit the entire amount of compensation, which is payable along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw their share of the amount as per the apportionment made by the Tribunal. The minor share shall be deposited in fixed deposit in any one of the Nationalized Bank for a period of three years, till she attains majority. The mother of the minor is permitted to withdraw the accrued interest thereon once in three months. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VIII)

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Sub-Assistant Registrar

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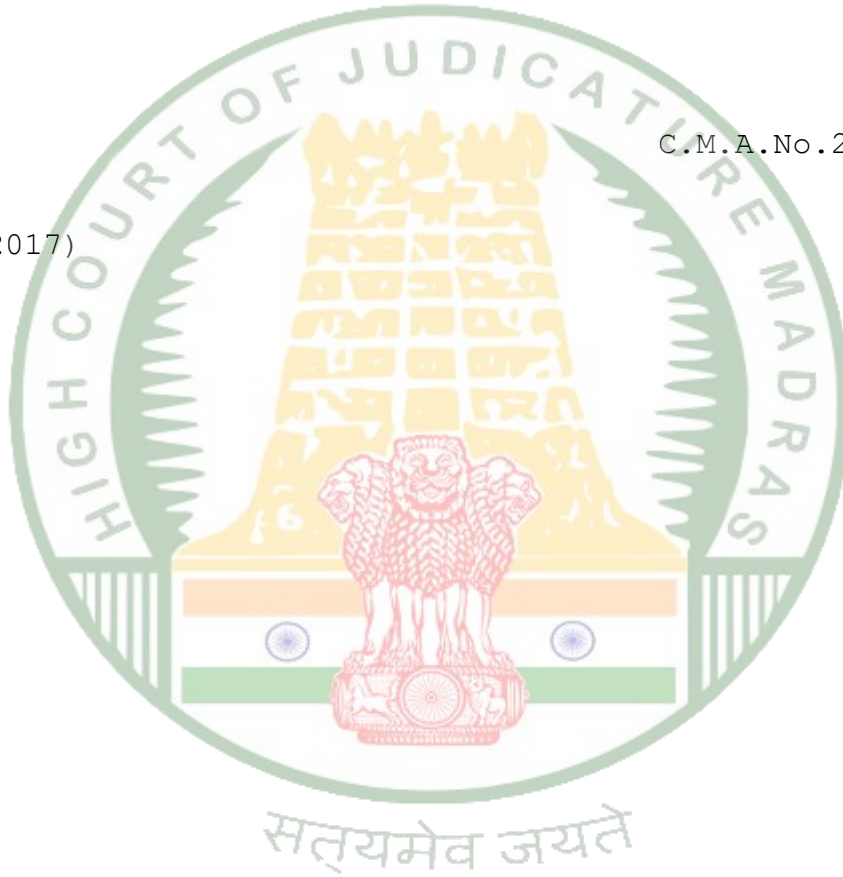
The Motor Accident Claims Tribunal,
(II Additional District Judge),
Poonamallee.

+1 cC to Ms.M. Malar, advocate sr 73581.

+1 CC to Mr.M. Krishnamoorthy, Advocate sr 73584.

C.M.A.No.2741 of 2016

LRS (CO)
SP(17/11/2017)



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