

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.M.A.No.788 of 2016

and

C.M.P.No.6402 of 2016

ICICI Lombard General
Insurance Company Ltd.,
'Chottabhai Centre', II Floor
No.140, Nungambakkam High Road,
Chennai - 600 034. ... Appellant/2nd Respondent

vs.

1. Namita Panda
W/o Late Subhabrata Panda
2. Minor- Ananaya Panda
D/o Late Subhabrata Panda
(Minor Respondent is rep. by her
Natural Guardian & next friend
Mother the first Respondent
Namita Panda
3. Prajapati Panda,
S/o Bhupati Charan Panda
4. Gitarani Panda,
W/o Prajapati Panda
5. E.Balasubramanian,
S/o Esakkimuthukona ... Respondents/Petitioners, 1st
Respondent.

Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 against the judgment and decree dated
30.06.2014 made in M.C.O.P.No.543 of 2011 on the file of Motor
Accident Claims Tribunal, Principal District Judge at Perambalur.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : Mr.T.Gobinath
for M/s.Royan and Law Associates
for R1 to R4

J U D G M E N T

(Judgment of the Court was delivered by HULUVADI G. RAMESH,J.)

This appeal is filed by the Insurer of the offending lorry in question challenging the Award dated 30.06.2014 made in M.C.O.P.No.547 of 2011 on the file of Motor Accident Claims Tribunal, Principal District Judge at Perambalur.

2. It is a case of fatal accident. On 21.07.2011 at about 5.15 a.m., the deceased Subhabrata Panda started from his house to the working place. While he was passing the Saibaba Temple, an Eicher medium goods vehicle bearing Registration No.TN-20-AM-0612 belonging to the first respondent herein and insured with the appellant herein, which was coming in the Trichy-Chennai direction, driven in a rash and negligent manner, dashed against the said Subhabrata Panda and the wheels of the said Eicher goods vehicle ran over his head and legs, as a result of which, he died on the spot.

3. The claimants/wife, daughter and parents of the deceased have filed a claim petition in M.C.O.P.No. 547 of 2011 seeking a compensation of Rs.20,00,000/-. In support of the claim, the wife of the deceased was examined as P.W.1., the co-worker of the deceased one Prakash, who lodged the complaint in respect of the accident was examined as P.W.2 and Karuppannan, Motor Vehicle Inspector was examined as P.W.3 and Exhibits P1 to P12 were marked on the side of the claimants. On behalf of the owner and insurer of the vehicle, R.W.1-Saravanan, Security Officer of Toll Plaza, R.W.2 -Natarajan, Junior Assistant and R.W.3 Anandaraj, Legal Assistant were examined and Exhibits R1 to R10 were marked before the Tribunal.

4. The Tribunal, after taking note of the oral and documentary evidence held that the accident had happened only due to the rash and negligent driving by the driver of the fifth respondent herein/ owner of the vehicle and liability was fastened on the appellant herein viz., insurer of the vehicle to pay the compensation.

5. Accordingly, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.N o.	Head	Amount granted by the Tribunal
1	Loss of income	Rs.12,44,160/-
2	Transport charges	Rs. 5,000/-
3	Funeral expenses	Rs. 5,000/-
4	Loss of estate	Rs. 10,000/-
5	Loss of love and affection	Rs. 1,00,000/-
6	Loss of conjugal happiness	Rs. 1,00,000/-
	Total	Rs.14,64,160/- (rounded off to Rs.14,64,000/-)

6. In the present appeal, the appellant is not disputing the quantum of compensation but only the factum of the accident is disputed.

7. Learned counsel for the appellant/Insurer submitted that the FIR was lodged against the vehicle of which the registration number is not known. It is a case of hit and run. After five days of the accident, the vehicle was produced for inspection to the Motor Vehicle Inspector and the said vehicle has been implicated in the case. There is no clear evidence on the part of the claimants to prove the involvement of the vehicle in question. Even P.W.2, the co-worker who gave the complaint has clearly admitted that he has not witnessed the accident. Hence, the liability cannot be fastened on the insurer. Therefore, the finding of Tribunal in arriving at the conclusion that the accident had happened only due to the rash and negligent driving of the vehicle in question is erroneous.

8. Per contra, learned counsel for the claimants submitted that on the basis FIR filed, the police conducted investigation and filed the charge sheet. There is also evidence of P.W.3/Motor Vehicle Inspector to the effect that during inspection the front left side grill and indicator glass were found broken and that the accident had not happened due to any mechanical defect. Apart from that, R.W.1, Saravanan who was working as Security Officer at the Toll Plaza near Samayapuram had stated in his evidence that the vehicle in question crossed Samayapuram Toll Plaza on the particular date and he had also deposed that if a Heavy Motor Vehicle was driven in a normal speed, it can take one hour from Toll Plaza to reach Perambalur. The driver of the vehicle in question has not been examined and confronted with the aforesaid statement.

9. Having gone through the award passed by the Tribunal and taking into account the evidence of P.W.3 and R.W.1, we are of the view that the finding rendered by the Tribunal, fastening the liability on the part of the driver of the vehicle which had coverage with the appellant herein/ insurer cannot be found fault with. Further, the driver of the vehicle having not been examined to show its whereabouts at the particular point of time, it is too late in the day for the appellant to contend that the vehicle could not have been indulged in the accident and the manner in which the accident is said to have happened is doubtful, has no legs to stand.

11. For the reasons aforesaid, the Civil Miscellaneous Appeal is dismissed as follows:-

- (i) The award of the Tribunal granting compensation to the tune of Rs.14,64,000/- 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 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 claimant 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 claimant shall be paid to 1st respondent/ mother of the minor claimant once in three months till the 2nd respondent attains majority.
- (vii) There will be no order as to costs in this appeal.
- (viii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

vsi

To

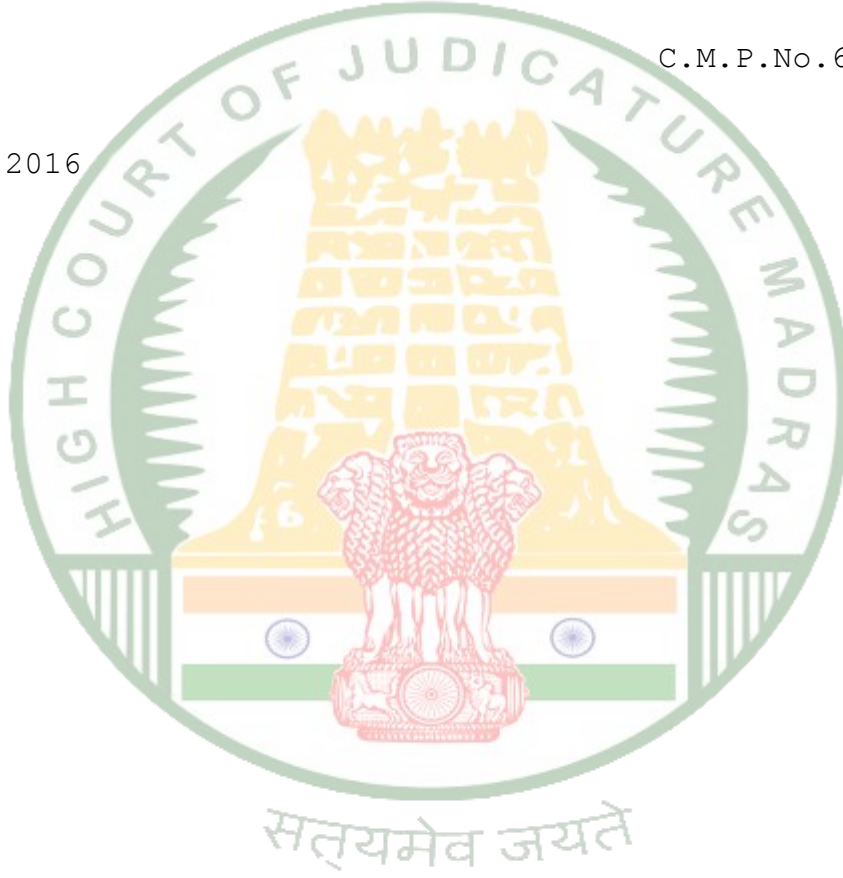
Principal District Judge
The Motor Accident Claims Tribunal
Perambalur.

1 cc to M/s.Royan Law Associates, Advocate, sr.23916

1 cc to Mrs.R.Sreevidhya, Advocate, sr.23662

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