

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2016

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A.Nos.1594 to 1597 of 2012

The Divisional Manager,
United India Insurance Company Ltd.,
No.13-A, Nethaji Road,
Manjakuppam,
Cuddalore - 1. ... Appellant in all Appeals/2nd Respondent

vs.

Krishnaveni
Arumugam ... Respondents 1 & 2
in C.M.A.No.1594/2012/Petitioner

Senbakavalli
Gopal ... Respondents 1 & 2
in C.M.A.No.1595/2012/Petitioner

Pichaiammal
Jagadeesan ... Respondents 1 & 2
in C.M.A.No.1596/2012/Petitioner

Sarasu
Subramani ... Respondents 1 & 2
in C.M.A.No.1597/2012/Petitioner

Sivakumar ... 3rd Respondent
in all Appeals /1st Respondent
(R3 set exparte in Lower Court)

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decree dated 21.09.2011 made in M.C.O.P.Nos.447/2008, 47/2009, 48/2009 and 54/2009, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.I, Tindivanam.

For Appellant in all Appeals: Ms.R.Sreevidhya
for Mr.K.S.Narasimhan

For R1 & R2 in all Appeals : Mr.T.Dhanyakumar

C O M M O N J U D G M E N T

The Insurance Company has come up with the present appeals challenging the common award dated 21.09.2011 passed by the Motor Accidents Claims Tribunal, Fast Track Court No.I, Tindivanam in M.C.O.P.Nos.447/2008, 47/2009, 48/2009 and 54/2009.

2. Since the facts and issue involved in all these Appeals are one and the same, the Appeals are taken up for disposal by a common judgment.

3. In all the four appeals, the claimants are the parents of the deceased. On 06.06.2006, about 1.30 p.m., when the deceased viz. Prabhu @ Prabakaran, Ponniyappan, Sivakumar @ Sivakozhundhu, Ayyaar and yet another person were travelling in an Auto bearing Registration No.TN 32 V 7824 from Kooteripattu to Chinnanerkunam Village, due to the rash and negligent driving of its Driver, the Auto capsized, resulting in the death of all the five.

4. Contending that the accident had occurred only due to the rash and negligent driving of the Auto Driver and that the owner and Insurer of the Auto are liable to pay compensation, the claimants, who are the parents of the deceased, filed individual claim petitions before the Tribunal, each seeking a sum of Rs.10,00,000/- as compensation.

5. Before the Tribunal, on behalf of the claimants, one Krishnaveni, 1st claimant in M.C.O.P.No.447/2008 was examined as P.W.1; one Subramani, 2nd claimant in M.C.O.P.No.54/2009 was examined as P.W.2; one Gopal, 2nd claimant in M.C.O.P.No.47/2009 was examined as P.W.3 and one Jagadeesan, 2nd claimant in M.C.O.P.No.48/2009 was examined as P.W.4 and Exs.P1 to P5 were marked. On the side of the Insurance Company, no witness was examined and no exhibits were marked.

6. On consideration of the oral and documentary evidence, the Tribunal held that the owner of the Auto as also the Insurance Company, with which it is insured, are liable to compensate the claimants and awarded a sum of Rs.3,12,000/- as compensation in each claim petition with interest at 7.5% per annum.

7. Learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to take note that Auto-Rickshaw is meant to carry only three passengers besides Driver and it ought to have restricted the liability of the Insurer to three passengers only. He further contended that 25% of the compensation need to be reduced towards the negligence of the deceased.

8. Heard the learned counsel on either side and perused the material documents on record.

9. In all the cases, the deceased were aged 20/21 years at the time of accident. Though five persons died in the alleged accident, claim petitions have been filed only for four of them. Since the accident is of the year 2006, the Tribunal fixed the notional income of the deceased at Rs.3000/- and after deducting one-third towards their personal expenses and adopting the multiplier of '13', arrived at a sum of Rs.3,12,000/- (Rs.3000/- x $\frac{1}{3}$ x 12 x '13') towards 'loss of earnings'. The main challenge of the appellant/Insurance Company in these Appeals is the negligence fixed by the Tribunal.

10. Admittedly, an Autorickshaw is supposed to carry only three passengers besides the Driver. In the case on hand, four passengers have travelled besides the Driver and due to the rash and negligent driving of the Driver, the Auto capsized and all five died. The contention of the appellant/Insurance Company that it is liable to pay compensation only for the death of three passengers cannot be brushed aside. Taking into account the facts and circumstances of the case, this Court feels it appropriate to reduce 25% of the compensation awarded to the claimants towards the negligence of the deceased. Accordingly, after deducting 25% from the total compensation of Rs.3,12,000/-, a sum of Rs.2,34,000/- is arrived as the '75% compensation' payable to the claimants in each Claim Petition.

11. In fine, the appellant/Insurance Company is directed to deposit a sum of Rs.2,34,000/- (Rupees Two Lakhs Thirty Four Thousand only) along with accrued interest at 7.5% per annum in each Claim Petition to the credit of M.C.O.P.Nos.447/2008, 47/2009, 48/2009 and 54/2009, respectively, on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.I, Tindivanam, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants in each Claim Petition shall be paid the entire amount awarded by this Court along with accrued interest, as per the ratio apportioned by the Tribunal, by means of a crossed Account Payee Cheque, favouring only them and it should not be issued in favour of any other person/Company.

12. The Trial Court is expected to follow the procedures contemplated in the order dated 11.03.2016 passed by a Division Bench of this Court in C.M.A.No.428 of 2016, scrupulously.

The Civil Miscellaneous Appeals are allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Fast Track Court No.I,
Motor Accidents Claims Tribunal,
Tindivanam.

2.The Section Officer,
Vernacular Records,
High Court, Madras-104.

+4cc to M/S Sankara Narayanan, & J.Chandran, Advocate SR.21660,
27662, 27663, 27665

C.M.A.Nos.1594 to 1597 of 2012

rsk[co]
srg 21/11/2016

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