

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2654 of 2006

Oriental Insurance Co. Ltd.,
Vellore

... Appellant/4th Respondent

vs.

1. Srinivasan
2. Krishnaveni
3. Minor Manju
4. Minor Ayyappan
5. Minor Sivasakthi
R3 to 4 are rep. by their father/next friend
guardian/R1

6. P.Subramani ... 6th Respondent/1st Respondent

7. The New India Assurance Co. Ltd.,
CSI Complex, No.1 Officer's Line
Vellore-1. ... 7th Respondent/2nd Respondent

8. A.S.Mohammed Sadiq ... 8th Respondent/3rd Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the order and decreetal order dated 20.10.2005 passed in M.C.O.P.No.500 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

For Appellant : Mr.S.Arunkumar
For Respondents: No appearance for R6 & R7
(R1, 2 & 8 dismissed vide
order dated 21.09.2015)

JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal challenging the Judgment and decree dated 20.10.2005 passed in M.C.O.P.No.500 of 2004 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Thiruvannamalai.

2. Heard the learned counsel for the appellant and no representation for the learned counsel who took notice for the respondents 6 and 7 and perused the materials available on record.

3. A 22 year old Television, Fridge Mechanic died in a fatal accident which took place on 24.08.2001 when the appellant/Insurance Company's Van bearing Reg.No.TN57-1544 hit against the Van bearing Reg.No.TN25-B-7608, belonging to the 6th respondent insured with the 7th respondent in which the deceased was travelling. The legal representatives of the deceased, who are the parents, sister and brother of the deceased, have approached the Tribunal claiming compensation to the tune of Rs.4,00,000/- on the basis of the monthly income of the deceased at Rs.4,000/- per month. The Tribunal, taking note of the factual aspect, fixed the monthly income at Rs.2,000/- per month and not as pleaded by the claimants at Rs.4,000/- per month and by

adopting the multiplier '17' and awarded the compensation to the tune of Rs.2,72,000/- towards loss of income, besides awarding a sum of Rs.5,000/- towards loss of love and affection and a sum of Rs.2,000/- towards funeral expenses, totalling a sum of Rs.2,79,000/- together with interest at 7.5% p.a. Aggrieved over the same, the present Civil Miscellaneous Appeal is filed by the Insurance Company.

4. According to the learned counsel for the appellant/Insurance Company, the Tribunal has wrongly arrived the conclusion that both the drivers were equally responsible for the accident and has not considered the fact that the accident has occurred due to the rash and negligent driving of the driver of the Van bearing TN-25-B-7608, is only responsible for the said accident, insured with the 7th respondent and the appellant is not liable to pay compensation.

5. However, a cursory glance of the award of the Tribunal would make it clear that there was an accident caused by both the drivers of the Van due to which the deceased sustained grievous injuries and died on the spot. The Tribunal after taking note of the evidence more particularly, the FIR is against the driver of the vehicle bearing No.TN 25-B-7608 and also insured with 7th respondent, as there is no evidence put

forth on behalf of both the Insurance Companies had arrived the compensation at Rs.2,79,000/- payable jointly and severally by both the Insurance Companies with interest at 7.5% p.a.. However, fixing composite negligence on the part of the drivers of the vehicles, the Tribunal came to the conclusion that both the drivers of the vehicles are equally responsible for the accident and that the appellant as well as the 7th respondent are liable to pay the compensation and the contention that the Tribunal ought to have drawn the adverse inference against the 6 and 7th respondents herein and not against the appellant, cannot be accepted as there is a specific finding arrived at by the Tribunal which cannot be found fault with. Hence, taking note of the totality of the circumstances, I find no reason to interfere with the award of the Tribunal.

6. In the above circumstances, finding no merit, by confirming the award of the Tribunal, the Civil Miscellaneous Appeal is dismissed. The rate of interest granted by the Tribunal is also confirmed. The appellant as well as the 7th respondent are directed to deposit the entire award amount together with interest to the credit of MCOP No.500 of 2004 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Thiruvannamalai, if not already deposited, within a period of

six weeks from the date of receipt of a copy of this order and on such deposit being made, the claimants 1 and 2 are entitled to withdraw their respective shares as apportioned by the Tribunal on filing necessary applications before the Tribunal. There will be no order as to costs in this appeal. Connected miscellaneous petition is closed.

28.04.2016

Index : Yes/No

Internet : Yes/No
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S.VAIDYANATHAN.J.

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To
The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal
Thiruvannamalai.

Judgment in
C.M.A.No.2654 of 2006

28.04.2016