

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.880 OF 2017
AND CMP NO.4345 OF 2017

Cholamandalam MS General Insurance
Company Limited
Bharathidasan Salai,
Cantonment, Trichy - 1. Appellant/2nd Respondent

Versus

1.Selvi
2.Sneka (Minor)
3.Sathiya (Minor)
4.Dhivakar (Minor)
5.Annappottu
(Respondents 2 to 4 minors
represented by mother and NF
1st respondent)
6.D.Anbazhagan Respondents

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.09.2016 made in MCOP No.51 of 2012, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.N.Vijayaraghavan

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award of compensation dated 09.09.2016, passed in M.C.O.P.No.51 of 2012, by the Motor Accidents Claims Tribunal (Principal District Judge) Perambalur, the insurance company preferred the above appeal, on the grounds of negligence and quantum.

2. On 20.07.2011, at about 00.15 hours, while the deceased was driving his motorcycle, bearing Registration No.TN37-AE-4804, on Perambalur to Thuraiyur Main Road, the lorry bearing Registration No.TN46-E-9958, belonging to the sixth respondent herein, was parked in the middle of the road. The deceased hit the two wheeler in the rear portion of the lorry and sustained fatal injuries and died on the spot. A case in Crime No.661/2011, under Sections 279, 337 and 304(A) IPC was registered, on the file of Perambalur Police Station, against the two wheeler rider.

3. Based on the above facts, the respondents 1 to 5 / claimants have filed a claim petition before the Tribunal seeking compensation of Rs.10,00,000/-.

4. The appellant - insurance company filed a counter affidavit before the Tribunal denying the time and manner of accident. It was stated that due to burst of the tyre, the lorry was parked on the extreme left side of the road, following all the traffic rules. Therefore, the insurance company is not liable to pay the compensation.

5. Before the Tribunal, two witnesses were examined on the side of the claimants and Exs.P1 to P9 were marked. No witnesses were examined and no documents were marked on the side of the respondents.

6. On the basis of the materials available, the Tribunal had decided the issue as to who is negligent and whether the claimants are entitled to compensation as prayed for.

7. Admittedly, as per the counter affidavit filed by the appellant - insurance company, the lorry was parked in the middle of the road due to burst of the tyre. The deceased had hit his motorcycle with the rear portion of the lorry and died on the spot. The claimants had let in evidence that the lorry was parked without following any traffic rules. No danger light nor any indication as to the parking of the vehicle was made. The driver of the lorry had lodged a complaint against a dead person alleging negligence on his part. On the basis of the statement given by the driver of the lorry, police have registered First Information Report and no investigation was conducted in this regard. Before the Tribunal, neither the insurance company nor the owner of the vehicle, have elucidated the time and manner, in which the accident had taken place, by adducing evidence or marking documents, whereas P.W.1 and P.W.2 have cogently explained as to how the accident had taken place and as to how the lorry driver was responsible for the accident by not adhering to the traffic rules.

8. Relying on the evidence of the claimants, the Tribunal had decided the issue of negligence on the preponderances of probability, as the law of strict evidence is not applicable in such cases. Following the judgment of this Court in UNITED INDIA INSURANCE COMPANY LIMITED, RANIPETTAI VS. SUNDARAM AND OTHERS [2007 (2) TNMAC 518] the Tribunal has fastened the negligence on the driver of the sixth respondent vehicle.

9. In so far as the registration of complaint against the deceased is concerned, the Tribunal has relied on a judgment of this Court in NEW INDIA ASSURANCE COMPANY LIMITED, COIMBATORE VS. MANIMARAN AND ANOTHER [2008 (2) TNMAC 137] wherein it is clearly stated that FIR is not an encyclopedia. It is the duty of the Tribunal to examine the aspect of negligence on the basis of evidence adduced by both the parties.

10. In the instant case, the respondents / claimants had let in evidence whereas the insurance company as well as the owner of the vehicle have not adduced any oral or documentary evidence to prove the manner, in which the accident had taken place or to exonerate themselves, from the negligence aspect. Therefore, on the basis of the evidence available and as per the ratio laid down by the judgments cited supra, the Tribunal has decided the issue of negligence and held that the driver of the sixth respondent was negligent and thereby, the appellant insurance company is liable to pay the compensation.

11. In so far as the issue of quantum is concerned, the deceased was 34 years of age at the time of accident and he was working as a Driver by profession and earned Rs.15,000/- per month. In respect of the claim, the claimants have marked Ex.P2 - Post Mortem Certificate, Ex.P3 - death certificate, Ex.P4 - legal heirship certificate, Ex.P5 - driving license, Ex.P6 - family card, Ex.P7 - Registration Certificate of the sixth respondent's vehicle, Ex.P8 - insurance policy of the sixth respondent's vehicle and Ex.P9 - driving license of Rajamanickam. As per Ex.P2, the Tribunal has fixed the age of the deceased as 34. The deceased was possessing valid driving license and he was working as a Driver to meet out livelihood. On the basis of his profession, the income was fixed at Rs.9,000/- per month.

12. Following the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] multiplier 16 was fixed as the deceased was 34 years of age at the time of death. On the basis of the monthly income and the multiplier applied, the quantum of compensation under the head loss of earning capacity was decided. After deducting 1/4th towards his personal and living

expenses, the Tribunal has arrived at a sum of Rs.12,96,000/- [Rs.9000 X 3/4 = Rs.6750/- X 12 X 16) towards loss of annual income. The Tribunal has awarded a sum of Rs.1,00,000/- for loss of consortium to the first respondent / wife; Rs.1,00,000/- for loss of love and affection; Rs.20,000/- for funeral expenses; Rs.10,000/- for transportation; for loss of cloths and belongings, a sum of Rs.2,000/- was awarded and the total compensation was fixed at Rs.15,28,000/-, with proportionate interest at the rate of 7.5% per annum, from the date of petition, till the date of realization.

13. In fact, the Tribunal, on the basis of the consumer price index, could have fixed the monthly income slightly higher and also Rs.1,00,000/- each to the minors, for loss of love and affection. However, the Tribunal restricted itself in fixing the quantum of compensation at Rs.15,28,000/-, which can be considered as not excessive. Therefore, the grounds raised by the appellant insurance company does not make out a case for interference. The award of compensation, therefore, need not be interfered with.

14. The appellant - insurance company is directed to deposit the entire award amount, with proportionate interest at the rate of 7.5% per annum and costs, from the date of petition, till the date of realization, within a period of four weeks from the date of receipt of a copy of this order, to the credit of MCOP No.51 of 2012, on the file of Motor Accidents Claims Tribunal [Principal District Court] Perambalur.

15. On such deposit being made, the respondents 1 and 5 / claimants are permitted to withdraw their respective shares, on filing proper applications before the Tribunal.

16. In so far as the share apportioned to the minors is concerned, the same should be deposited in favour of the minors viz., respondents 2 to 4, in a Nationalised Bank, in a reinvestment scheme, till they attain majority. The first respondent / mother is entitled to withdraw interest accrued thereon, for the welfare of the minors. The apportionment given by the Tribunal can be applied for the rest of the amount.

17. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

TK

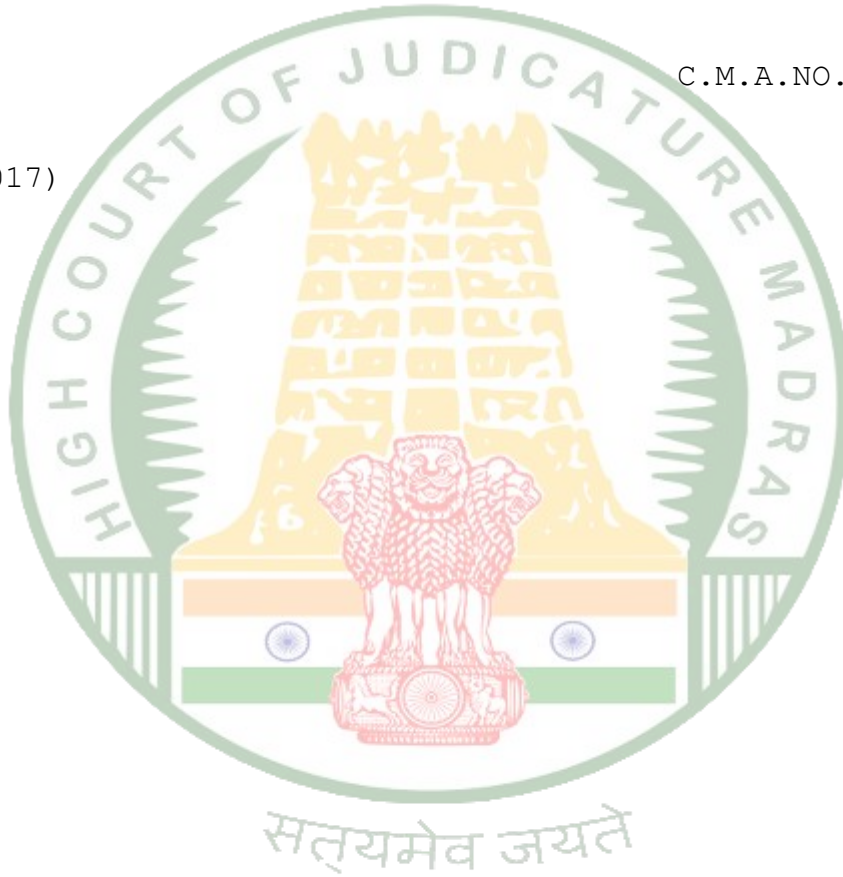
To
The Principal District Court
The Motor Accidents Claims Tribunal
Perambalur.

Copy to:
The Section Officer, VR Section,
High Court, Madras

+lcc to Mr.M.B.Gopalan Associates advocate sr.19732

C.M.A.NO.880 OF 2017

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