

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1336 of 2010
and C.R.P.(NPD)No.1764 of 2010

C.M.A.No.1336 of 2010

M/S.Royal Sundaram Alliance
Insurance Company Limited
'Royal Sundaram Towers'
45-46 Whites Road
Chennai-600 014.

.. Appellant

Vs.

1.Krishnaveni
2.Minor Kiruthika
(Minor represented by mother
and guardian 1st respondent)

3.Kutbutheen

4.Palaniappan
(Respondents 3 and 4 are set exparte
in the lower Court)

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2009 made in M.C.O.P.No.155 of 2007 on the file of the Motor

Accident Claims Tribunal (Subordinate Court) Bhavani.

For Appellant	: Mrs.Sree Vidhya
For R1	: Mr.C.Kulanthaivel
For R2	: Minor
For R3 & R4	: Exparte

C.R.P.(NPD)No.1764 of 2010

M/S.Royal Sundaram Alliance
Insurance Company Limited
'Royal Sundaram Towers'
45-46 Whites Road
Chennai-600 014.

.. Petitioner

Vs.

1.Krishnaveni
2.Kutbutheen
3.Palaniappan
(Respondents 2 and 3 are set exparte
in the lower Court)

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree dated 29.10.2009 made in M.C.O.P.No.157 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Court) Bhavani.

For Petitioners : Mrs.Sree Vidhya

For R1 : Not ready in notice

For R2 & R3 : Exparte

COMMON ORDER

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 29.10.2009 made in M.C.O.P.No.155 of 2007 on

the file of the Motor Accident Claims Tribunal (Subordinate Court) Bhavani.

2. Civil Revision Petition is filed against the judgment and decree dated 29.10.2009 made in M.C.O.P.No.157 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Court) Bhavani.

3. Both the civil revision petition & the civil miscellaneous appeal are arising out of the same accident, the issues to be decided in both the petition & appeal are one and the same and therefore, they are disposed of by this common order.

4. In the claim petitions, petitioner/appellant/insurance company is the third respondent, first respondent in both CRP & CMA & the second respondent in CMA, who is the minor girl, are the claimants, second respondent in CRP, who is the third respondent in CMA is the driver of the lorry, third respondent in CRP, who is the fourth respondent in CMA, is the owner of the lorry.

5. For the sake of convenience, the parties are referred to as per their ranks in the civil miscellaneous appeal.

6. The first respondent filed M.C.O.P.No.157 of 2007 claiming a sum of Rs.2,00,000/- for the injuries sustained by her in the accident that occurred on 26.12.2005. The first and second respondents filed M.C.O.P.No.155 of 2007 claiming a sum of Rs.10,00,000/- as compensation for the death of one Sadanandam in the accident that occurred on 26.12.2005.

7. According to the first and second respondents, on 26.12.2005, the first respondent, her husband and his brother's wife viz. Saraswathi were travelling in a car bearing Registration No.6295 and while the husband of the first respondent was driving the said car in low speed and it was nearing Bhavani-Mettur main road, the lorry bearing Registration No.KA-01-T-3435, which came in the opposite direction, was driven by its driver in a rash and negligent manner and dashed against the car. As a result, the accident took place. In the said accident, first respondent and other victim Saraswathi sustained grievous injuries, husband of the first respondent/Sadanandam died on 05.01.2006 due to the injuries sustained by him, in spite of giving proper treatment. The third respondent is the driver of the lorry and fourth respondent is its owner. The lorry is insured with the appellant/insurance company.

Therefore, the respondents 1 and 2 claimed compensation against the appellant, third and fourth respondents.

8. The appellant/insurance company filed separate counter statements and denied the age, avocation and income of the deceased Sadanandam, which was given in the claim petitions. Since the accident took place only due to rash and negligent driving by the driver of the car/deceased Sadanandam, a case has been registered against him. Hence, the appellant is not liable to pay any compensation to the respondents 1 and 2. Further, the amount of compensation claimed by the respondents 1 and 2 are excessive.

9. Before the Tribunal, the first respondent and victim Saraswathi were examined themselves as P.W.1 & P.W.2 and marked seven documents as Exs.P1 to P7. The appellant examined R.W.1 to R.W.4 and marked four documents as Exs.R1 to R4.

10. The Tribunal, after considering the pleadings, oral and documentary evidence came to the conclusion that the accident took place due to rash and negligent driving by both the drivers of the car and lorry, fixed negligence at 50% on the part of the driver

of the lorry, awarded a sum of Rs.5,15,920/- as compensation and directed the driver of the lorry and appellant to pay the compensation of Rs.2,57,960/- to the respondents 1 & 2 in respect of M.C.O.P.No.155 of 2007. In respect of M.C.O.P.No.157 of 2007, the Tribunal taking into consideration that the first respondent sustained simple injuries, awarded a sum of Rs.5,000/- as compensation to the first respondent/claimant.

11. Against the common judgment and decree dated 29.10.2009 made in M.C.O.P.Nos.155 & 157 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Court) Bhavani, the appellant/insurance company has filed the present Civil Miscellaneous Appeal and Civil Revision Petition respectively.

12. The learned counsel for the appellant/insurance company submitted that the complaint given by the first respondent before the Bhavani police station has been closed as mistake of facts. Since the accident occurred only due to rash and negligent driving by the driver of the car, a case has been registered against him. If the Tribunal had come to the conclusion that the driver of the car is responsible for the accident, he cannot fix contributory negligence

on the part of the driver of the lorry. Further, the amount of compensation awarded by the Tribunal was excessive and without any basis.

13. The learned counsel for the respondents 1 and 2/claimants submitted that the Tribunal awarded only meagre sum of compensation to the claimants and therefore, he prays for dismissal of the appeal.

14. Heard the learned counsel for the appellant as well as the respondents 1 & 2/claimants and perused the materials available on record.

15. As far as negligence is concerned, the Tribunal considering the evidence of P.W.1/first respondent, Ex.P1/FIR and Ex.P2/rough sketch, held that as the driver of the car drove the same in a wrong direction, the accident took place. As per the evidence of R.W.2/driver of the lorry, on seeing the car, which was coming in the wrong direction, he immediately stopped his vehicle on the mud road and the car dashed against the same. But the appellant/insurance company has not mentioned the same in his

counter statement. The Tribunal further held that as per Ex.P4/Motor Vehicle Inspector's report, both the vehicles are dashed against each other. Though the driver of the car drove the same in a wrong direction, on seeing the same, the driver of the lorry could have avoided the accident. It is not the case of the driver of the lorry that he has taken steps to avoid the accident. In the circumstance, the Tribunal rightly fixed 50:50 contributory negligence on the part of both the drivers of the lorry and car. This Court has no reason to interfere with the findings of the tribunal in respect of negligence.

16. As far as quantum of compensation is concerned, the Tribunal taking into consideration that the first respondent/claimant sustained only simple injuries, has awarded a sum of Rs.5,000/- and considering the medical bills of the husband of the first respondent/deceased Sadanandam, awarded Rs.2,57,960/- to the respondents 1 & 2/claimants, which are just and reasonable compensation and the same are hereby confirmed. The Motor Vehicles Act is a beneficial legislation in favour of the victims. The victims should not be denied their rightful compensation on technicalities. In the circumstance, I hold that in the interest of

justice and equity, this is not a fit case to set aside the award of the Tribunal.

17. In the above circumstances, this Court is not inclined to interfere with the impugned award passed by the Tribunal. Accordingly, the award passed by the Tribunal is hereby confirmed. The Civil Miscellaneous Appeal and the Civil Revision Petition are dismissed. No costs.

10.08.2017

Index : Yes/No

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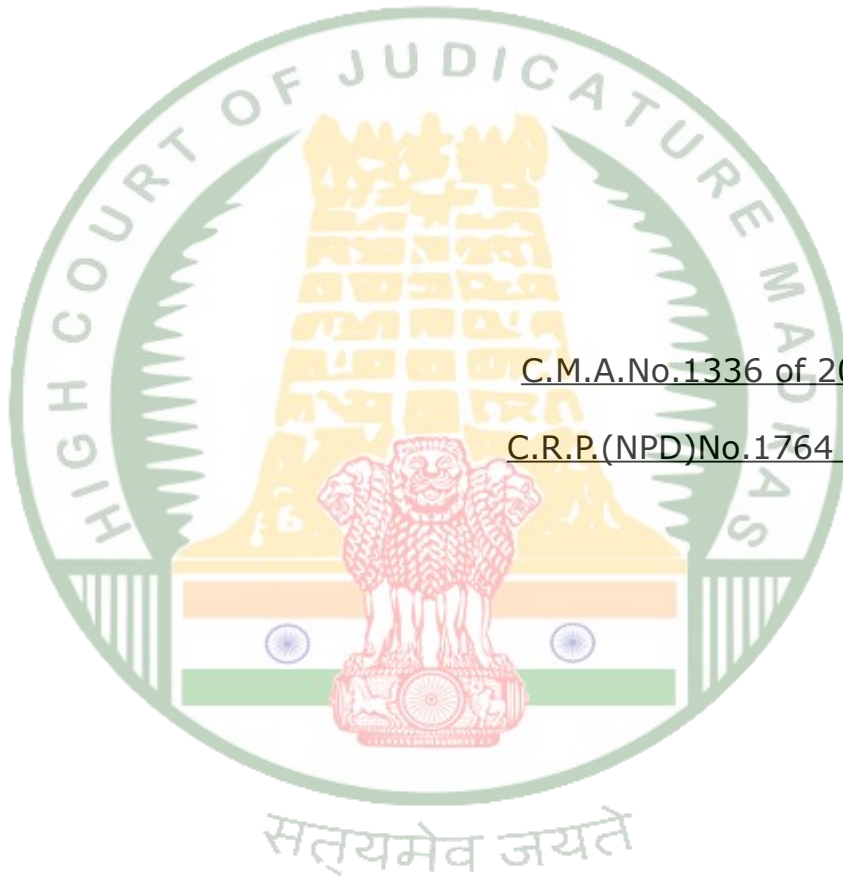
The Motor Accident Claims Tribunal
Subordinate Judge, Bhavani.

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V.M.VELUMANI, J.

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