



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANUC.M.A(MD)No. 460 of 2017andC.M.P. (MD)Nos.4969 and 7385 of 2017

Divisional Manager,
The Oriental Insurance Company Ltd.,
4, Bharathidhasan Road,
IInd Floor, Condonement,
Trichy-1.

... Appellant / Respondent.2

Vs.

1.Dakadu Kasinath Dikole ... Respondent No.1/ Petitioner No.1
2.S.Patmini Dakadu Dikole ... Respondent No.2/ Petitioner No.2
3.Mahesh Dakadu Dikole ... Respondent No.3/ Petitioner No.3

4.Saravanan ... Respondent No.4/ Respondent No.1
(R4 given up)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.1473 of 2013 dated 14.02.2014 on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Trichy.

For Appellant : Mr.C.Jawahar Ravindran

For R1 to R3 : Mr.N.Sudhakar Nagaraj

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the Judgment and Decree passed in M.C.O.P.No.1473 of 2013 dated 14.02.2014 on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Trichy.

2. It is a case of fatal accident took place on 08.07.2010 at about 7.00 p.m, at Attur Road, in which, the driver of the lorry bearing Registration No. TN-48-K3-7209, which belongs to the first respondent and insured with the appellant-Insurance Company, came in a rash and negligent manner and turned the vehicle even without giving any horn due to which the deceased who was riding a two wheeler bearing Registration No.TN-48-Z-3432 dashed behind the

<https://hccasesys.courtindia.reservices/> devices and he succumbed to the injuries.



3. The claimants filed an application in M.C.O.P.No.1473 of 2013 dated 14.02.2014 on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Trichy, seeking compensation.

4. Before the Tribunal, on the side of the claimants two witnesses were examined as P.Ws.1 and 2 and five documents were marked as Ex.P.1 to Ex.P.5. On the side of the respondents R.W1 was examined and no documentary evidence was marked.

5. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and claimants and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the lorry, which is insured with the appellant/Insurance Company and directed the appellant/Insurance Company to pay a sum of Rs.6,19,200/-, as compensation.

6. Against which, the appellant/Insurance Company has filed this present appeal mainly questioning the liability and also quantum.

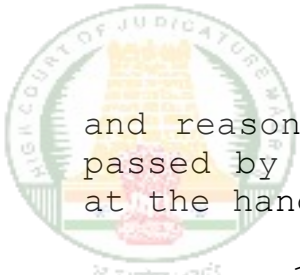
7. The learned counsel appearing for the appellant/Insurance Company contended that the deceased, who drove the two wheeler, only dashed on the back side of the lorry and hence, the Tribunal ought not to have fixed 90% liability on the driver of the lorry. He would further submit that the Tribunal has erroneously and excessively awarded compensation.

8. Per contra, the learned counsel for the respondents 1 to 3/claimants contended that the Tribunal awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is to be dismissed.

9. Heard the learned counsel appearing on both sides and perused the materials available on record.

10. The learned counsel appearing for the claimants would draw the attention of this Court to paragraph No.6.(v) of the order of Tribunal, wherein it is clearly stated that after perusing the evidence of P.W.2 and R.W.1 only, the Tribunal has fixed 10% contributory negligence and arrived at the conclusion that the accident occurred due to rash and negligent driving of the driver of the lorry.

11. As far as quantum of compensation is concerned, the Tribunal has fixed the monthly income at Rs.4500/- and as per the *Shri. S. Venkatesh v. State of Karnataka*, reported in 2009(2) TN MAC 1 (SC), the Tribunal fixed the correct multiplier. The amounts awarded under all the heads are also just



and reasonable and therefore, there is no infirmity in the award passed by the Tribunal and the same does not require interference at the hands of this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the award made in M.C.O.P.No.1473 of 2013 dated 14.02.2014 on the file of the Motor Accidents Claims Tribunal cum Special District Judge, Trichy, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of six weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the respondents 1 to 3/claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs without filing formal permission petition. No Costs. Consequently, connected C.M.P.(MD) Nos.4969 and 7385 of 2017 are closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To,

The Motor Accidents Claims Tribunal
cum Special District Judge, Trichy.

+One cc to M/s.C.Jawahar Ravindran, Advocate, SR.No.72437

CM

RL/3C/3P/GT/SAR1/11/9/2017

C.M.A(MD)No. 460 of 2017

and

C.M.P. (MD)Nos.4969 and 7385 of 2017

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