

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.Nos.857 of 2006

and

CMP.No.3348 of 2006

The New India Assurance Co.Ltd.,
Parimalam Complex,
No.11, E.V.N.Road,
Namakkal.

... Appellant/2nd Respondent

Versus

1.Velusamy

2.Saranya

3.Kumaresan

4.Ammachiammal ... Respondents 1 to 4/Petitioners

5.Velmani ... 5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the order and decree dated 29.04.2005 made in M.A.C.T.O.P.No.1256 of 2004 on the file of the Motor Vehicles Accident Claims Tribunal and Fast Track Court III, Namakkal.

For Appellant : Mr.S.Ramalingam

For Respondents: Mr.N.Umapathi, For R1 to R3
Mr.N.Manokaran, For R5

J U D G M E N T

This civil miscellaneous appeal has been preferred against the judgment passed in M.A.C.T.O.P.No.1256 of 2004 dated 29.04.2005, on the file of the Motor Vehicles Accident Claims Tribunal and Fast Track Court III, Namakkal.

2.The brief facts leading to the claim application in respect of MACTOP.No.1256 of 2004 are as follows:-

On 16.05.2002, the injured petitioners and other persons were engaged as coolie for loading sand in the vehicle bearing Registration No.T.N.37 S.5121. After loading the vehicle, while they were travelling in the said lorry on 17.05.2002, at about 9.30 am, on Trichy to Namakkal main road, near Meikkalnaickenpatty, the driver drove the vehicle at high speed in a rash and negligent manner and applied sudden break. As a result, the lorry was capsized. Due to the said accident, the petitioners and other passengers were injured and one person died. The petitioners have filed a claim petition for a sum of Rs.5,00,000/- towards compensation.

3.The Insurance Company/second respondent before the Tribunal has stated in their counter statement that the driver driven the lorry in a normal speed at the time of accident since the another lorry which was coming in the same direction, has overtook the lorry, in which the petitioners and other passengers travelling. Unfortunately, the said lorry was capsized. Hence, there is no rash and negligent driving on the part of the driver of the said lorry as stated in the claim petition.

4.The Tribunal, upon analyzing the evidence and documents, has come to the conclusion that the said accident was occurred due to the rash and negligent driving on the part of the driver of the lorry, hence, respondents 1 and 2 are liable to pay compensation, who are the owner and insurer of the said lorry respectively and awarded compensation of Rs.3,64,000/- against the claim of Rs.5,00,000/-. Aggrieved by the said judgment, the Insurance Company has preferred this CMA to set aside the same.

5.In the grounds of appeal, the appellant has very much questioned the liability on the basis that whether the claimants were travelled in the said lorry as a load men and if that being so, whether, the appellant is entitled for compensation. Further, it is stated that the multiplier adopted by the Tribunal is not reasonable and the disability fixed also excessive and the loss of income arrived at Rs.3,24,000/- by the Tribunal is not proper. On the whole, the total sum awarded as compensation at Rs.3,64,000/- is excessive.

6.It is seen from the records that R.W.1 who is working as accountant in Transport Corporation has deposed in his evidence that in the said lorry only three persons including the driver can travel and if more than three persons are travelled, it is against the policy conditions. The copy of the policy Ex.P2 was also filed before the Tribunal. The Insurance Company/appellant herein has stated that totally five persons were injured in the said accident and they travelled against the terms and condition

of the policy. Therefore, the Insurance Company is not liable to pay compensation.

7.Per contra, R.W.1 & R.W.2 in their evidence has deposed that the said lorry was being used as load vehicle and the premium was also paid to carry load men and the policy was also taken for six persons/employees. Therefore, it is clear that the said vehicle can carry maximum six load men/employees. The Tribunal has also rightly observed the said aspects and concluded that the injured persons are entitled for compensation.

8.The Tribunal has observed that the claimants are the relatives of the deceased. The deceased Chandra aged about 30 years, she was a coolie, earning Rs.4,000/- per month. The first petitioner is the husband of the deceased, second petitioner is the minor daughter of the deceased, third petitioner is the minor son of the deceased and fourth petitioner is the mother of the deceased. The sum arrived by the tribunal, after taking 1/3rd for the personal expenses, the sum arrived is Rs.3,24,000/- is appropriate and for loss of love and affection of claimants 1 to 4 at Rs.10,000/- are all very much reasonable, which need not be interfered with.

9.It is seen from the records that by taking monthly income of the deceased at Rs.4,000/- is very much reasonable and hence the determination of sum of Rs.3,24,600/- for loss of income is very much reasonable. Hence, award passed by the Tribunal based on the evidence and document are very much reasonable and need not be interfered with and the appeal is liable to be dismissed.

10.In view of the above, the civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the order of this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimants bank account through RTGS within one week thereon.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

AT

To

1. The Motor Vehicles Accident Claims Tribunal,
Fast Track Court III, Namakkal

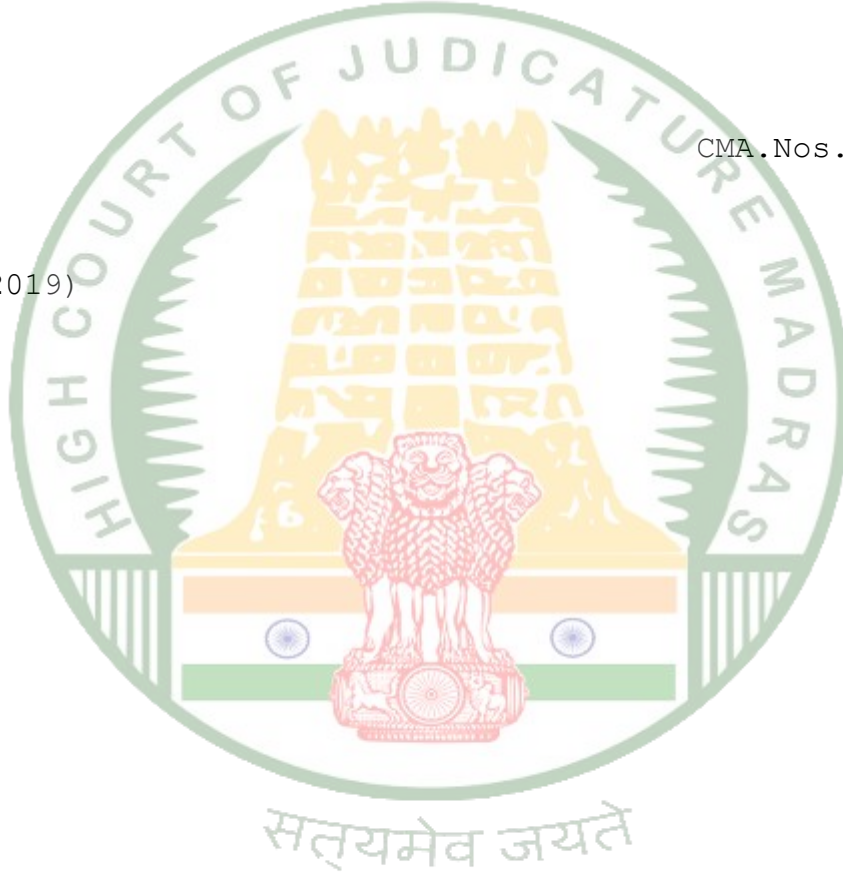
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 CC to Mr.S.Ramalingam, Advocate sr 74177.

+1 CC to Mr.N.Manokaran, Advocate sr 74109.

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SPD(CO)
SP(10/09/2019)



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