

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3755 of 2010
and M.P.No.1 of 2010

Royal Sundaram Alliance Insurance
Company Limited.,
Sundaram Towers,
45 & 46, Whites Road,
Chennai - 600 014.

... Appellant/2nd Respondent

Vs

1.Chinnathambi

2.Saratha

3.T.Ramakrishnan

... Respondents/Petitioners 1&2
& 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accidents Claims Tribunal, Principal District Judge (Presiding Officer), Cuddalore in M.C.O.P.No.1934 of 2006 dated 03.06.2010.

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr.N.R.Rajagopalan For R1 & R2 - NA
R3 - ex parte in Lower Court

JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the Award dated 03.06.2010, passed by the Motor Accidents Claims Tribunal, Principal District Judge (Presiding Officer), Cuddalore in M.C.O.P.No.1934 of 2006.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)One Thiruvengadam died on 27.12.2005, as a result of an accident caused by a bus bearing Registration No.TN-31-F-7009,

owned by the third respondent and insured with the Appellant. The respondent Nos.1 and 2 are the parents of the deceased Thiruvengadam and they are the only dependents for the deceased.

(ii) They preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.1934 of 2006, seeking a compensation of Rs.20,00,000/- for the death of Thiruvengadam.

(iii) The Motor Accidents Claims Tribunal by its Award dated 03.06.2010 in M.C.O.P.No.1934 of 2006, directed the Appellant to pay the respondent Nos.1 and 2 a sum of Rs.4,05,000/- together with interest at the rate of 9% per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 03.06.2010, passed by the Motor Accident Claims Tribunal in M.C.O.P.No.1934 of 2006, the instant appeal has been filed by the Insurance Company.

4. Heard, Mrs.R.Sreevidya, learned Counsel for the Appellant and Mr.N.R.Rajagopalan, learned Counsel for the respondent Nos.1 and 2. The third respondent has remained ex parte both before the Tribunal as well as before this Court.

5. According to the learned Counsel for the Appellant, the Appellant is not liable to compensate for the death of Thiruvengadam. She submitted that the FIR was originally registered at the time of the accident only against an unknown vehicle and only thereafter after considerable period of time, the vehicle was identified and charge sheet was also filed against the insured vehicle. According to her, the Tribunal has erroneously rejected the evidence of RW1 and RW3 by invoking the maxim res ipso loquitur, the rule of evidence which is legally and factually unsustainable. She also contended that the quantum of compensation awarded by the Tribunal is excessive.

6. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective Counsels observes the following:

(a) It has been the consistent stand of the respondent Nos.1 and 2 before the Tribunal, that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened.

(b) On the side of the respondent Nos.1 and 2, two witnesses were examined, namely the first respondent and Venugopal an eye witness. Both of them have deposed that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened.

(c)Before the Tribunal, the driver of the insured vehicle (lorry) was examined as RW1, he has simply stated that the accident happened only due to the negligence of the Motor cyclist.

(d)One Venkatesan, who was travelling in the insured vehicle at the time of the accident was examined as RW2. But, he did not state anything about the accident in his deposition. Even though, the FIR was registered only against the unknown vehicle subsequently after investigation by the Police, a charge sheet was filed against the driver of the insured vehicle. This fact is also admitted by RW1 and RW2 in their deposition before the Tribunal.

7.The third respondent (owner of the vehicle) has also remained ex parte before the Tribunal and did not adduce any evidence to disprove the claim of the respondent Nos.1 and 2. The Tribunal has considered the oral and documentary evidence available on record and only thereafter has fastened the liability on the Appellant under the impugned Award. Insofar as, the compensation awarded by the Tribunal is concerned, the Tribunal under the impugned Award has awarded a total compensation of Rs.4,05,000/- to the respondent Nos.1 and 2 in the following manner:

Sl. No.	Amount awarded by tribunal
General Compensation	Rs.3,90,000/-
Transport/ambulance charges	Rs. 2,500/-
Funeral expenses	Rs. 2,500/-
Loss of estate, Love and affection	Rs. 10,000/-
Total	Rs.4,05,000/-

While assessing the compensation payable to the respondent Nos.1 and 2, the Tribunal has applied the principles laid down by the Hon'ble Supreme Court in the case of Sarla Verma and others Vs Delhi Transport Corporation and another reported in 2009 ACJ 1298, and only thereafter has assessed the compensation. Even if there is some amount of contributory negligence on the part of the deceased, the compensation awarded by the Tribunal under the various heads is a just compensation.

8.In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

9.The Appellant Insurance Company is directed to deposit the amount awarded by the Tribunal together with interest at the rate of 9% per annum from the date of claim till the date of realisation as per the apportionment made by the Tribunal, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.1934 of 2006, on the file of The Motor Accidents Claims Tribunal, Principal District Judge (Presiding Officer), Cuddalore, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents are permitted to withdraw the said sum as per the apportionment made by the Tribunal by filing an appropriate application.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arb/pam

To

- 1.The Motor Accidents Claims Tribunal,
Principal District Judge (Presiding Officer),
Cuddalore.
- 2.The Section Clerk,
VR Section,
High Court, Madras.

+1 cc to Mrs.R.Sreevidhya, Advocate Sr.No.76881

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PA(CO)
CSL/13.12.2018

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