

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1573 and 1574 of 2015
and M.P.Nos.1,1 of 2015

The Branch manager
National Insurance Co.Ltd.,
No.2, Solor Resiplaza, 63
West Pradhakshinam road
Karur-639 002. .. Appellant in both CMAs./2nd Respondent

Vs.

1.Mohanavadivu
2.Guna Sakunthala Devi
.. 1 and 2 Respondents in both CMAs./Claimant
3.P.Rathinasamy .. 3rd Respondents in both CMAs./1st Respondent

Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.08.2014 made in M.C.O.P.Nos.450 and 451 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Tiruppur.

For Appellant : Mr.S.Arunkumar

For R1 & R2 : Mr.MA.P.Thangavel

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed by the Insurance Company against the award dated 28.08.2014 made in M.C.O.P.Nos.450 and 451 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Tiruppur.

2. Both the appeals are arising out of the same accident and common award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.The appellant/Insurance Company is second respondent in M.C.O.P.Nos.450 and 451 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Tiruppur. The claimants, who are the legal heirs of the deceased parents, filed M.C.O.P.No.450 of 2011 for the death of their father viz., Kumarasamy and filed M.C.O.P.No.451 of 2011 for the death of their mother viz., Valliammal, who died in the accident that took place on 21.03.2011.

4.The Tribunal considering the pleadings and accepting Ex.R1/sketch, held that the accident occurred due to the rash and negligent driving by the driver of the lorry/first respondent insured with the second respondent and directed both the respondents 1 and 2 to pay a sum of Rs.8,55,000/- and Rs.7,47,000/- in M.C.O.P.Nos.450 and 451 of 2011 respectively as compensation to the claimants, jointly and severally.

5.Against the said award dated 28.08.2014 made in M.C.O.P.Nos.450 and 451 of 2011, both the appeals have been filed by the Insurance Company challenging the liability as well as quantum of compensation awarded by the Tribunal.

6.The learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal erred in fixing the liability on the driver of the lorry belonging to the first respondent. The Tribunal having disbelieved the evidence of P.W.3/eye witness, ought to have accepted the evidence of R.W.2/driver of the lorry. The Tribunal failed to appreciate the evidence of R.W.1 and R.W.2. The Tribunal erroneously fixed notional income of the deceased father and mother at Rs.7,500/- and Rs.6,000/- per month in M.C.O.P.Nos.450 and 451 of 2011 respectively, which are excessive. The claimants are not dependants of the deceased parents and they are not entitled to any compensation and prayed for setting aside the award of the Tribunal.

7.Per contra, the learned counsel appearing for the claimants contended that the claimants have examined P.W.3, an eye witness to prove that the accident occurred only due to rash and negligent driving by the driver of the lorry. The First Information Report is registered only against the driver of the lorry. The version of R.W.2/driver of the lorry that the deceased Kumarasamy while turning at the curve, slipped down, is not believable. Both the deceased were doing agricultural work and in addition to that, the deceased Valliammal was doing milk vending business and was earning a sum of Rs.10,000/- per month.

The notional income fixed by the Tribunal is reasonable and not excessive. The claimants are daughters of the deceased and are dependants of the deceased and hence, they are entitled to claim compensation and prayed for dismissal of both the appeals.

8. Heard the learned counsel appearing for the second respondent/Insurance Company as well as the claimants and perused the materials available on record.

9. From the award of the Tribunal, it is seen that the Tribunal did not accept the evidence of P.W.3. At the same time, the Tribunal considered the evidence of R.W.2 and did not accept the version of R.W.2 also. From the materials available on record, it is seen that R.W.2/driver of the lorry has deposed that while the deceased Kumarasamy was riding his motorcycle and was turning at a curve, slipped and fell down. As rightly pointed out by the learned counsel appearing for the claimants this version of R.W.2 is not acceptable in view of the grievous injuries sustained by both the rider of the motorcycle as well as pillion rider. The Tribunal after disbelieving the evidence of P.W.3 and R.W.2, considering Ex.P1 rough sketch and the fact that the lorry is heavy vehicle and it was standing at a distance from the place of accident, held that the driver of the lorry was responsible for the accident by his rash and negligent driving. As rightly pointed out by the Tribunal, a person driving the heavy vehicle must be careful in driving the same so as to avoid the accident and he must take care with regard to coming vehicles. In the present case, the accident has occurred just before the curve and the lorry was standing at a distance in the road on the southern side. The Tribunal taking into consideration the place of accident and where the lorry was standing, held that only because the driver was driving the lorry at high speed and he could not stop the lorry immediately, the accident had occurred. The said finding of the Tribunal does not warrant any interference by this Court. As far as quantum of compensation is concerned, the compensation awarded by the Tribunal is just compensation and the same is hereby confirmed.

10. In the result, both the Civil Miscellaneous Appeals are dismissed. The second respondent/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective share amount granted by the Tribunal on the basis of apportionment fixed by the Tribunal along with proportionate

interest and costs, after adjusting the amount already withdrawn, if any. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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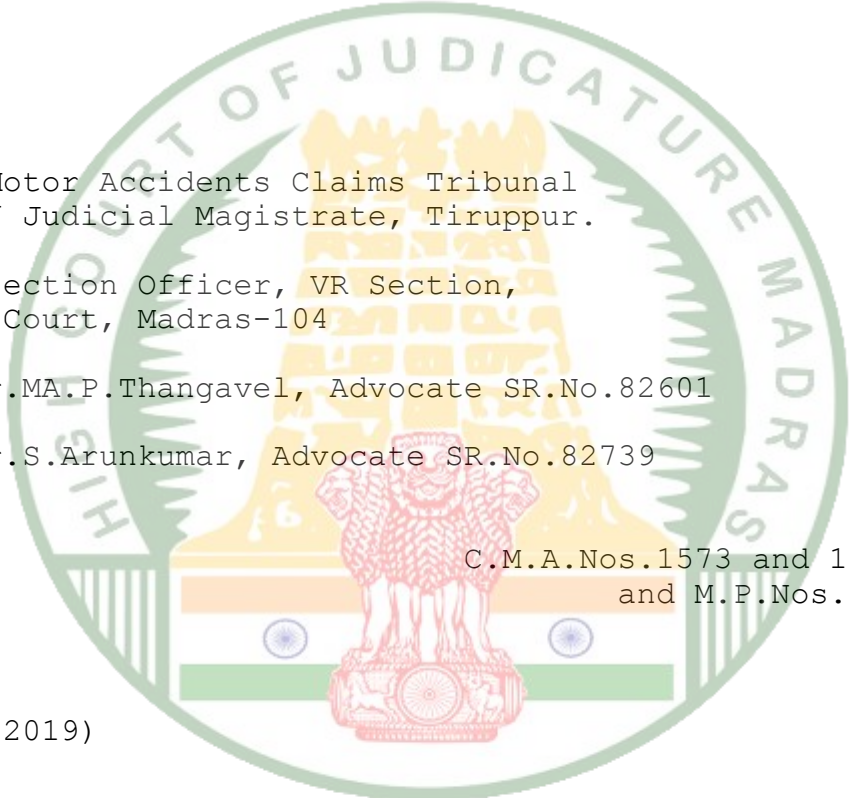
1. The Motor Accidents Claims Tribunal
Chief Judicial Magistrate, Tiruppur.
2. The Section Officer, VR Section,
High Court, Madras-104

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.82601

+1cc to Mr.S.Arunkumar, Advocate SR.No.82739

C.M.A.Nos.1573 and 1574 of 2015
and M.P.Nos.1,1 of 2015

RK (CO)
GMY (21/03/2019)



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