

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No. 217 of 2015 and
M.P.No. 1 of 2015

Royal Sundaram Alliance Insurance Company Limited,
Sundaram Towers, No.46, Whites Road,
Chennai - 14. ... Appellant/2nd Respondent

Vs.

1.A. Dhanalakshmi
2.Minor A. Arul Selvan
represented by mother A. Dhanalakshmi
3.K. Devi
4.K. Rajakumari ... Respondents 1 to 4/Claimants
5.K. Jayadevar ... 5th Respondent/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree passed by the learned I Additional District Judge, Cuddalore in M.C.O.P.No.199 of 2007, dated 16.10.2014.

For Appellant : Mr.M. Krishnamoorthy
For Respondents 1 & 2 : Mr.A.N. Viswanatha Rao

J U D G M E N T
सत्यमेव जयते

The Appellant/Insurance Company has filed this Appeal against the Judgment and Decree passed by the learned Additional District Judge, Cuddalore in M.C.O.P.No.199 of 2007, dated 16.10.2014.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal.

3. The case of the petitioner is that, on 05.09.2005 at about 12.00 midnight, while the deceased i.e., K.Aruljothi, was walking on the left hand side of the road at Athirikuppam, the first respondent's vehicle bearing Registration No.TN-31-F-3501

came at high speed dashed against the deceased resulting in his death at the spot itself. The accident occurred due to the rash and negligent act of the first respondent's vehicle driver only. The deceased was aged 22 years and as a driver, he was earning of Rs.10,000/- per month. The petitioners, who are the wife, children and parents of the deceased were dependents on the income earned by the deceased. Hence, the petitioners claimed a sum of Rs.15 lakh as compensation from the respondents 1&2, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim of the petitioners by filing the counter, the 2nd respondent/Insurance Company contended that the accident does not occur as alleged by the claimants. The involvement of the first respondent's vehicle viz., lorry in the accident was to be proved by the petitioners. The claim of the petitioners as regards the age, avocation and the income of the deceased was denied. The claim of the petitioners is exorbitant. Hence, the respondents sought for dismissal of the petition.

5. Before the Tribunal, the petitioners examined PW1 & PW2 and produced documents Ex.P1 to Ex.P6 to prove their claim. On the side of the respondents, RW1 and RW2 were examined and documents Ex.R1 to Ex.R6 were marked.

6. The Tribunal, after analysing the materials available on record, found that negligence of the first respondent's lorry driver alone was responsible for the accident and passed an award for a sum of Rs.9,29,000/- as compensation to the petitioners payable by the respondents, who are the owner and insurer of the offending vehicle. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present appeal.

7. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal ought to have dismissed the claim petitioner as the vehicle bearing Registration No.TN-31-F-3501 was not involved in the accident. The Tribunal failed to appreciate the oral and documentary evidence produced by the respondent, which clearly establishes the fact that the said lorry was not involved in the accident. The driver of the said lorry, who deposed as RW2 clearly stated about the vehicle being not involved in the accident. Thus, the 2nd respondent/Insurance Company sought for setting aside the award passed by the Tribunal by allowing this appeal.

8. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contends that the evidence is available to prove the involvement of the first respondent's vehicle in the accident and as such, the Tribunal is justified in passing the award in favour of the petitioners. Thus, the

respondents sought for dismissal of the appeal.

9. Heard both side and perused the materials available on record.

10. The petitioners categorically stated that on the occurrence date, as the deceased was walking along the road at Athirikuppam the first respondent's vehicle came at high speed and dashed against him. The eyewitness to the occurrence, who deposed as PW2, stated that while he was walking along the road, the deceased was going in front of him in the road at Athirikuppam and at that time, the first respondent's lorry bearing Registration No.TN-31-F-3501 came at high speed dashed against the said K.Aruljothi, resulting in his death on the spot itself.

11. On the other hand, the driver of the said lorry, who deposed as PW2 stated that on 05.09.2005, he was informed about the accident at Athirikuppam at 12.00 p.m. and he was called for enquiry by the Police. It was further stated that he was acquitted in the Criminal Case laid against him as per Ex.R6. Copy of the judgment passed in C.C.No.162 of 2009, on the file of the Judicial Magistrate No.II, Panruti.

12. Admittedly, the police have registered the case against the first respondent's lorry driver and it is true that he was acquitted in the Criminal Case. However, this Court has to ascertain as to whether, negligence of the first respondent's driver caused the accident. It is pointed out that only because the said lorry was involved in the accident, the police have registered a case against the first respondent's lorry. In Ex.P1-First Information Report, the registration number of the lorry, which is involved in the accident is clearly mentioned. Eventhough, RW2 stated that he left the lorry in the owner's house at about 12.00 midnight on 05.09.2005, he was informed about the accident, on the very next day and the Kadampuliyur Police asked him to appear for enquiry but the same cannot be accepted, in view of the contents of Ex.P1 FIR and absence of any proof for the claim of the driver of the lorry. Further, no reason is attributed by the first respondent as to why police registered a false case against him. Further, the second respondent/Insurance Company has not filed any investigation report. Eventhough, it is alleged by the respondent that the complaint was lodged by CBCID as per Ex.R1, there is nothing on record to show as to what happened to the said complaint. Admittedly, the case in C.C.No.161 of 2009 was filed against the respondent's lorry driver only. In such circumstances, the Tribunal is justified in holding that the negligence of the first respondent's lorry driver alone caused the accident on the basis of PW2 eyewitness account and Ex.P1-First Information

Report.

13. Eventhough, the Insurance Company has come forward with the present appeal contending that the first respondent's lorry is not involved in the accident, no ground is alleged against the quantum of award passed by the Tribunal. As stated above, the contention of the 2nd respondent/Insurance Company, regarding the non involvement of the first respondent vehicle is rejected. As such this Court is of the view, that nothing is made out by the Insurance Company, questioning the conclusion arrived at by the Tribunal regarding quantum of the award. As such, the finding of the Tribunal about the involvement of the first respondent's lorry in the accident and the same occurred only due to the negligence of the lorry driver is just and proper. This Court finds no merit in the appeal and no ground is made out to interfere with the quantum of award arrived at by the Tribunal. Thus, the award passed by the Tribunal is based on proper reasoning and the same is confirmed.

14. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

msm

To

1. The I Additional District Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

+1cc to Mr.A.N.VISWANATHA RAO, Advocate, S.R.No.21885
+1cc to Mr.M.KRISHNAMOORTHY, Advocate, S.R.No.21751

C.M.A.No.217 of 2015

TR(06/07/2018)