

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.2263 of 2015 and
M.P.No.1 of 2015

The Royal Sundaram Alliance Insurance Company Limited
TVS Cooperative Stores Building,
37, Krishna Rao Tank Street,
Madurai - 625 001. Appellant/ 2ND Respondent

-vs-

Siva Bala Jothi (died)
1.Krishnammal
2.N.Mohan Kumar.... Respondents/Complaint & 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 against the Decree and Judgment
made in M.C.O.P.No.610 of 2013 dated 24.02.2015 on the
file of the Motor Accidents Claims Tribunal, Special
District Court, Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: Ms.Sunitha
for M/s.Mukund R.Pandiyan for R1
No appearance for R2

J U D G M E N T

[Judgment of the Court was delivered by
R.SUBRAMANIAN, J.]

The Insurance Company is on appeal challenging the
Award granting a sum of Rs.16,80,000/- as compensation
for the death of one Rathika, the daughter of respondents
1 and 2.

2. The claim was preferred against the owner of the
lorry and the insurer. It is a case of collision between
two vehicles. It is alleged that the car in which the
deceased was a passenger came from behind and hit against
the lorry. Therefore, the negligence was on the part of
the car driver. The Tribunal based on the First
Information Report filed has concluded that the
negligence was on the part of the lorry driver. On

quantum, the Tribunal took note of the appointment order issued by the Ordinance Factory after the death of the victim and fixed her salary.

3. We have heard Mr.N.Vijayaraghavan learned counsel for the appellant and Ms.Sunitha, learned counsel for the first respondent. The second respondent though served has not entered appearance.

4. The challenge is to the Award on two grounds viz., one on the ground of negligence and the other on the ground of quantum. Mr.N.Vijayaraghavan, learned counsel for the appellant would submit that the driver of the lorry was examined as R.W.2 to show that the accident occurred due to the negligence of the car driver. According to the learned counsel, even assuming that certain amount of negligence could be attributed to the car driver, the deceased was only a passenger in the car. Therefore, it is a case of composite negligence. The claimant had a choice to sue any one of the vehicle involved in the accident seeking compensation.

5. A Division Bench of this Court as early as in State of Tamil Nadu and another v. P.K.Anandan [1982 ACJ 358] has held that in case of composite negligence, the compensation could be recovered from any one of the owner of the vehicle involved in the accident leaving it open to the Insurance Company to make a claim against the other vehicle, if it chooses to do so. The same view has been reiterated by the Hon'ble Supreme Court recently in Khenyei vs. New India Assurance Co. Ltd., and others [2015 (4) MLJ 364]. In view of the same, we do not think that we should disturb the findings of the Tribunal on the ground of negligence.

6. As far as the quantum is concerned, the Tribunal has taken the letter issued by the Ordinance Clothing Factory, Avadi to arrive at the compensation and applied the appropriate multiplier. Even though the letter from the factory was issued after the death of the victim, we do see no reason to doubt the genuineness of the said letter. Hence, there is no ground to interfere with the quantum of compensation also.

7. In view of the above, the appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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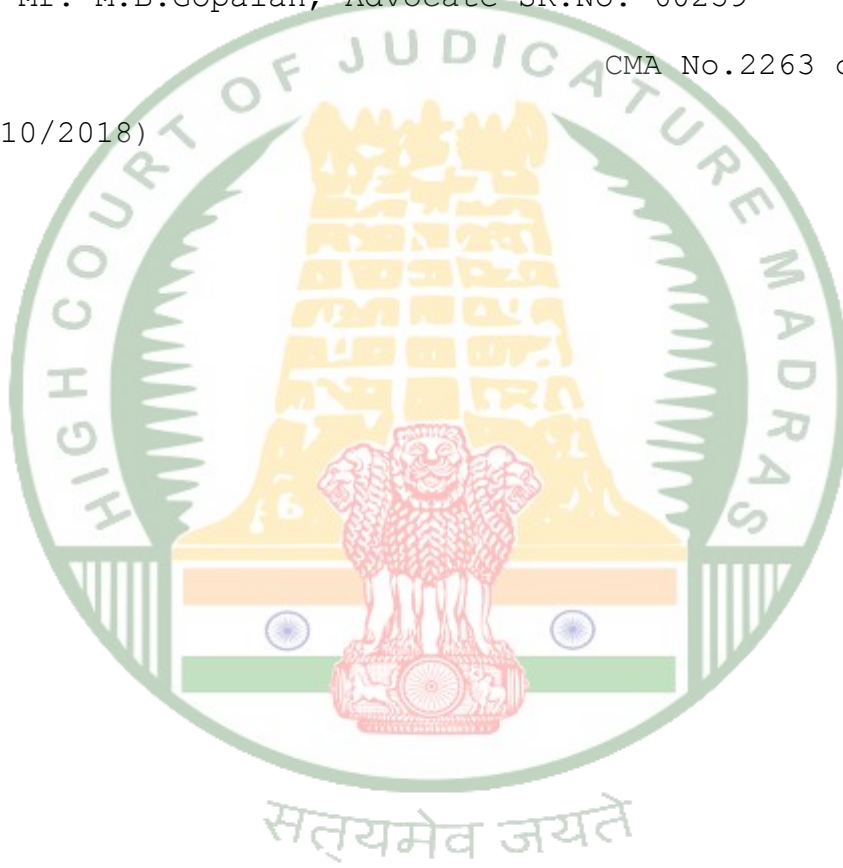
The Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.

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The section officer,
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+1cc to M/s.Mukund R.Pandiyan , Advocate SR.No.59856
+1cc to Mr. M.B.Gopalan, Advocate SR.No. 60259

CMA No.2263 of 2015

ASK(31/10/2018)



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