

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.953 of 2013
and M.P.No.1 of 2013

The New India Assurance Co.Ltd.,
No.251, Tiruvottiyur High Road, 2nd floor,
Tondiarpet, Chennai.

...Appellant/2nd Respondent

..Vs..

1.K.Mangaiyarkarasi
2.Minor K.Kalaiyarsi
3.Minor K.Kanimozhi
4.Minor K.Kalaiselvi
5.Minor K.Kamala
6.Minor K.Thenmozhi

7.Minor K.Subashini
(Minors 2 to 7 represented by their mother &
natural guardian K.Mangaiyarkarasi
1 to 7 residing at Ramasamudram Village,
Embalam Post, Wandavasi Taluk,
Now residing at Nadukuppam Village)

..Respondents 1 to 7/ Petitioners 1 to 7

8.A.Immanuel Xavier

..8th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173
of the Motor Vehicles Act, 1988, against the Judgment and decree
made in M.C.O.P.No.214 of 2008 on the file of the Motor
Accidents Claims Tribunal (Subordinate Judge) at Arni dated
25.07.2012.

For Appellant : Mr.S.Partheeban for
Mr.M.Krishnamoorthy

For R1 : Mr.J.Saravana Vel
(R2 to R7 minors represented by R1)

For R8 : Exparte before Tribunal

J U D G M E N T

This Civil Miscellaneous Petition has been preferred against the Judgment and Decree made in MCOP.No.214 of 2008 on the file of the Motor Accidents Claims Tribunal, Arni.

The Brief facts of the leading to the claim petition is as follows:

2. The deceased in the claim application is the Driver in Tamil Nadu State Express Bus Corporation, Chennai who was on his trip from Madras to Ooty in a Bus bearing Registration No.T.N-01N-6682 and when he was returning from Ooty on 26.05.2008 at 8.30a.m, due to some air leakage, the bus had breakdown. The said bus on the part of the rear portion of the western side and the deceased Kalaivanan and the conductor one Sekar by taking rest in Central median of the High Way. At that time at about 11.a.m a container lorry bearing Reg.No.TN.No.69 D 4545, which was coming towards Chennai on the GST Road in a rash and negligent manner, out of his control, dashed against the platform and broke out the compound wall and run over the deceased kalaivanan as a result, the conductor viz., sekar had sustained injuries. Immediately they were rushed into the Government Medical Hospital at Chengalpattu, inspite of the taking treatment the said Kalaivanan died. The said accident occurred only due to the rash and negligent on the part of the driver of the container lorry and the said vehicle was insured with the second respondent. The Legal representatives of the deceased Kalaivanan have claimed compensation for a sum of Rs.2,50,000/-. A Criminal case was also registered against the driver of the container lorry in the Maraimalai Nagar, Police Station, Kanchipuram District.

3. The second respondent in the counter statement denied the manner of accident and also disputed the claim made by the claimants regarding the earning of the deceased. The other aspects stated in the counter statement is that the driver of the container lorry did not possess any valid driving license at the time of the accident. The rash and negligent on the part of the driver also very much denied by the respondent. The other aspects regarding the age employment income and the dependency of the claimants and the sum claimed were also denied and the claim also stated as excessive. Hence, the second respondent/insurance company disowned the liability.

4. The tribunal after analyzing the oral and documentary evidence, has given findings that, the driver of the container lorry who had driven the vehicle in a rash and negligent manner had caused the accident, resulting to the death of kalaivanan. The claimants who are the wife and children have lost their

husband and father. The tribunal has also given the finding, based on the evidence and documents that the deceased Kalaivanan is the man of 42 years and he is the driver by occupation and has also awarded a sum of Rs.17,09,824/-. Aggrieved against the said liability, the Insurance company has preferred this appeal.

5. In the grounds of appeal, the appellant/ insurance company has stated that the decree of the tribunal is contrary to law and the finding of the tribunal in fixing responsibility only on the driver of the container lorry for the said accident without taking note of the fact that the deceased also contributed to the accident by sleeping in the Central median of the High Way. It is also of the grievance of the appellant that the witness of R.W.1 and the documents filed by him was not properly considered by the tribunal. Hence the appellant sought for set aside the judgment of the tribunal.

6. Heard. Mr. Mr.S.Partheeban, learned Counsel for the appellant, Mr. J.Saravana Velu, learned Counsel for the respondents and perused the documents available on records.

7. The learned counsel for the appellant has contended that there is no negligence on the part of the driver of the container lorry and the negligence was on the part of the deceased, who were taking rest in the central median of the road, without considering their safety.

8. It is argued by the learned counsel for the appellant that since the bus was breakdown, they were taking rest under the shadow of the tree which was at the centre median of the road, hence there was no negligence on the part of the deceased and also the conductor of the bus.

9. It is also contended by the respondent that on their side, witnesses were examined and the documents were also placed before the tribunal prove the fact that the negligent act was on the part of the container lorry, which caused the accident. On perusal of the judgment, it is observed that on the part of the claimant 2 witness were examined and one witness on the side of the respondent was examined. P.W.1 has clearly deposed before the tribunal that at the time when he reached the place where the bus break down, the deceased and conductor of the said bus were sleeping and he witnessed a container lorry ran over the body of the deceased kalaivanan and the conductor of the bus, who were sleeping on the divided of the road.

10. On the other hand, it is argued by the appellant that it is the negligent act on the part of the deceased who was sleeping on the central median of the highway which separates two sides of the road.

11. Exhibit P1 is the FIR and the charge sheet also laid against the driver of the container lorry. It is also seen from the Ex.D4, the rough sketch that the alleged lorry had come from the south side and after dashing the central median road, it stopped on the eastern side. Hence the rash and negligent driving on the part of the driver of the container lorry was very much proved, by observing the position and place of the occurrence. Hence the findings of the tribunal that, because of the negligence of the driver of the container lorry, the deceased lost his life is very much proved by way of documents and evidence. Therefore, the interference of this Court is the said decision is unwarranted.

12. With regard to the other aspect that the liability fixed by the tribunal, though the appellant / Insurance Company denied the Insurance of the alleged lorry, it is very much proved before the Tribunal that the vehicle was insured with the appellant as per Exhibit P4 Insurance policy. On perusal of the documents and evidence on either side, it is very much clear that the accident had occurred only due to the rash and negligent driving on the part of the driver of the container lorry. If the said driver had driven the lorry with care and cautious manner, the death of the said Kalaivanan could have been avoided and claimants could not have lost their husband and father.

13. In view of the above, the findings of the tribunal fixing negligence on the part of the container lorry and the appellant who is the insurer of the said lorry is liable to pay the compensation to the claimants does not require any interference. Accordingly, the same is confirmed. The Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14. Accordingly, the Appellant/Insurance Company is directed to deposit the entire award amount as awarded by 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 amount to the claimants bank account thro' RTGS within one week thereon. The rate of interest and the apportionment shall carry the same as awarded by the tribunal.

ak

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Arni.

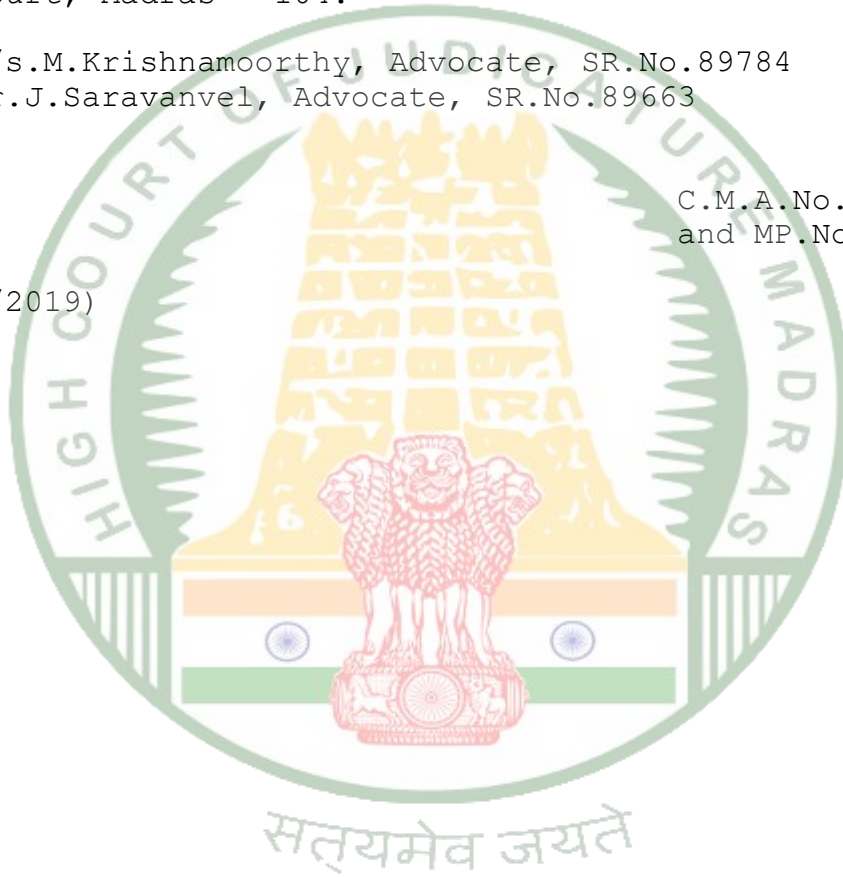
Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.M.Krishnamoorthy, Advocate, SR.No.89784
+1cc to Mr.J.Saravanvel, Advocate, SR.No.89663

C.M.A.No.953 of 2013
and MP.No. 1 of 2013

Kak(13/06/2019)



WEB COPY