

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2018

CORAM:

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

CMA.No.3089 of 2017

The Oriental Insurance Company Ltd,
Katpadi Road, Gudiyattam,
Vellore District.

... Appellant /2nd Respondent

-vs-

1.Rajeswari

2.Nagaraaj ... Respondent 1 and 2/Petitioners

3.S.Venkataraman ...3rd Respondent/1st Respondent

4.M/s. Indave Logistics Private Ltd,

5.New India Assurance Company Ltd,

rep by its Divisional Manager,
Office at Officers Line, Vellore,
Vellore District

... 4th and 5th Respondent
/3rd and 4th Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 13.06.2017 made in M.C.O.P.No. 250 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub Court), Gudiyattam.

For Appellant : Mr.D.Bhaskaran

For Respondents: Mr.J.Micheal Visuvasam for R5
Mr.S.Viswanathan &
M/s Dass & Viswa Associates
for R1 & R2
No Appearance for R3 & R4

J U D G M E N T

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

The Insurance company which had suffered an award for payment of a sum of Rs.15,83,000/- as compensation for the death of one Neelagandan in a motor accident that occurred on 06.03.2011 at 03:40AM, is the appellant.

2. According to the claimants, who are the parents of the deceased Neelagandan, the deceased who was employed as a driver was driving a container lorry bearing registration No.TN-21-AE-1068 on Senneer Kuppam Bridge. While so, he sighted a tipper lorry bearing registration No.TN-22-AP-8051 parked on the right side of the bridge without any warning signal or parking lamps. Despite his best efforts to avoid the collision, the container lorry driven by Neelagandan hit against the tipper lorry from the rear side resulting in grievous injuries to the driver namely, Neelagandan, he was immediately removed to the Government General Hospital, Chennai. Though he was put on emergency treatment, he succumb to the injuries at the hospital. Claiming that the haphazard parking of the tipper lorry bearing registration No.TN-22-AQ-8051 was the reason for the accident. The claimants sought for a compensation of Rs.25,00,000/-.

3. The claim was resisted by the appellant Insurance company, the Insurer of the tipper lorry contending that the deceased was only the responsible for the accident. According to it, the tipper lorry broke down and hence, it could not be moved from the spot. It is also claim that the driver of the tipper lorry had kept necessary warning signals ahead of the lorry. The Insurance company had also contended that the driver of the tipper lorry had immediately after the accident lodged a First Information Report against the deceased. The Insurer and the owner of the container lorry driven by the deceased Neelagandan were subsequently implead the respondents 3 and 4 in the claim petition. The owner of the tipper lorry, the owner of the container lorry as well as the Insurer of the container lorry remained ex-parte before the Tribunal.

4. The Tribunal which heard the claim petition on an appriciation of the evidence on record concluded that the entire negligence was on the part of the tipper lorry since it was parked on the wrong side of the road without any warning signal

during very early hours. The Tribunal, to come to the said conclusion relied upon the evidence of PW2 who was an eye-witness to the accident. The Tribunal disbelieved the contents of the First Information Report since the same was recorded at the instance of the driver of the offending tipper lorry.

5. On the quantum, the Tribunal took the income of the deceased at Rs.9,000/-, adding 50% towards future prospects and deducting 50% towards personal expenses, the deceased being a bachelor, applying a multiplier of 18, arrived at the loss of dependency at Rs.14,58,000/-. The Tribunal also awarded Rs.1,00,000/- towards loss of love and affection to the claimants, Rs.25,000/- towards funeral expenses. Thus, the total award worked out to Rs.15,83,000/-.

6. We have heard Mr.D.Baskaran learned counsel appearing for the appellant Insurance company, Mr.S.Viswanath for M/s. Dass & Viswa Associates for the claimants/respondents 1 and 2, Mr.J.Micheal Visuvasam for the 5th respondent. The respondents 3 and 4 though served are not appearing either in person or through counsel.

7. Mr.D.Baskaran learned counsel appearing for the appellant Insurance company would contend that the tipper lorry broke down while it was on the bridge and hence, the same could not be moved, relying upon the evidence of RW2, the driver of the lorry. Mr.D.Baskaran would contend the accident occurred due to the negligence of the deceased who was at the wheels of the container lorry bearing registration No.TN-22-AQ-8051. He would also fault the Tribunal for rejecting the evidence of RW2 as well as the First Information Report.

8. Per contra, Mr.S.Viswanath learned counsel appearing for the claimants would contend that the PW3 and PW4 who are eye-witnesses to the accident have deposed to the effect that the tipper lorry was parked on the right side of the bridge without any warning signal and said negligent parking of the lorry is cause for the accident. He would also invite our attention to the motor vehicle report of both the lorries and contend that the damages suffered by the tipper lorry which are primarily on the left side of the lorry would show that the same was parked on the right side during night without any warning signal. He would also draw our attention to the fact that the Motor Vehicle Inspector's report specifically states that there was no mechanical defect in the vehicle at the time of the accident.

9. On the quantum, the learned counsel would contend that the amount awarded by the Tribunal is reasonable based on the proved income of the deceased. We have considered the rival submissions. No doubt, First Information Report has been filed by the driver of the tipper lorry soon after the accident but we do not think that we should accept the version in the First Information Report, inasmuch as the same was registered at the instance of the driver of the tipper lorry which is the offending vehicle. Evidence of PW3 who is an eye-witness to the accident clearly demonstrates that the accident had occurred due to the negligent act of the driver of the tipper lorry in parking the vehicle on the wrong side of the road. The claim of the driver of the tipper lorry that the vehicle has broken down is belied by the motor vehicle Inspector's report which shows that there was no mechanical defect in the lorry at the time the accident occurred.

10. As rightly pointed out by the learned counsel for the claimants/respondents 1 and 2, the damages suffered by the tipper lorry which are on the left side of the lorry would also probabalise the case that the tipper lorry was parked on the wrong side of the road. We are, therefore of the considered opinion, the Tribunal was right in its conclusion that it was the negligent parking of the tipper lorry that resulted in the accident. We are, therefore, unable to accept the contentions of Mr.D.Baskaran learned counsel appearing for the Insurance company on the ground of negligence.

11. On the quantum, it is seen from the salary certificate filed as Ex.P10 and the evidence of PW2 who was the Manager of the owner of the container lorry that the deceased was being paid a monthly salary of Rs.18,500/-. The Tribunal has taken the monthly income at Rs.9,000/- and adding 50% towards future prospects, the Tribunal has arrived at the income for the purpose of determining loss of dependency at Rs.13,500/- deducting 1/2rd towards personal expenses of the deceased, the Tribunal has taken Rs.6,750/- as the monthly loss of dependency.

12. Mr.D.Baskaran learned counsel appearing for the Insurance company would contend that the Tribunal erred in adding 50% towards future prospects. Though we see some justification of the learned counsel, in view of the larger bench of the Honourable Supreme Court in National Insurance company Vs. Pranay sethi reported in 2018 (1) LW 331. We do

not, propose to disturb the award since the income arrived at by the Tribunal is very low compared to the normal income of lorry drivers in the year 2011, when the accident occurred. The compensation awarded by the Tribunal under the conventional heads is also very reasonable. We, therefore, do not find any ground to interfere with the quantum of compensation awarded by the Tribunal. For the foregoing reasons we do not find any merit in the appeal and the appeal stands dismissed. However, there will be no order as to costs.

13. The Insurance company is directed to deposit the award amount less any amount already deposited within a period of 6 weeks from the date of receipt of the copy of this judgment. On such deposit, the claimants are permitted to withdraw the same as per the proportionment made by the Tribunal.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To,

1. The Motor Accidents Claims Tribunal (Sub Court),
Gudiyattam.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/S.Dass and Viswa, Advocate sr.62920
+1cc to Mr.Bhaskaran, Advocate Sr.63059

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