

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.3073 and 3074 of 2007

CMA No.3073 of 2007:

M/s. Royal Sundaram Alliance
Insurance Co Ltd
46, Whites Road
Chennai -14.

Appellant /3rd Respondent

Vs

1. Soundambal (Wife of Thangavel)
2. Thangavel Chettiar Respondents 1 & 2/
3. Aboobacker Koorikkadan Petitioners 1&2
4. N C Koyakutty
5. Sumathi Respondents 3 to 5/
Respondents 1,2,& 4

(Respondents 3 & 4 exparte in lower Court
Notice may be dispensed with)

CMA No.3074 of 2007:

M/s. Royal Sundaram Alliance
Insurance Co Ltd
46, Whites Road
Chennai -14.

Appellant /3rd Respondent

Vs

1. T.Sumathi W/o. Late Tamilmani 1st Respondent / Petitioner
2. Aboobacker Koorikkadan(Driver)
3. N C Koyakutty (Owner)
4. Thangavel
- 5.Soundammal(W/o Thangavel) Respondents 2 to 5/
Respondents 1,2,4&5
(Respondents 2 & 3 exparte in Lower Court
Notice may be dispensed with)

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 20.04.2007 passed in M.C.O.P.Nos.19 of 2006 and 53 of 2006 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Pollachi.

For Appellant : Mr.N.Vijayaraghavan(for both CMAs)

Mr.M.N. Balakrishnan for R1 & R2 in C.M.A.No.3073/2007
for R4 & R5 in C.M.A.No.3074/2007

Mr. Gunalan for R5 in C.M.A.No.3073/2007
for R1 in C.M.A.No.3074/2007

R3 & R4 Exparte in C.M.A.No.3073/2007
R2 & R3 Exparte in C.M.A.No.3074/2007.

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

These Civil Miscellaneous Appeals are directed against the common award, passed on 20.04.2007 in MCOP Nos. 19 of 2006 and 53 of 2006 by the Claims Tribunal.

Brief facts:-

2. On 30.11.2005, at about 6.15 pm, one Tamilmani and his friend namely Arunkumar were travelling in a two wheeler bearing Reg.No.TN 41 H 8857 in Palani to Udumalpet main Raod and when the said vehicle reached near Rajavur Pirivu, a lorry bearing Reg.No.KL 11 V 6072, insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner hit them. Due to the said accident, they were thrown away from the two wheeler and sustained head injuries. The said Tamilmani died, while proceeding to the Hospital. Stating that the accident had happened, due to the rash and negligent driving of the driver of the Lorry, the parents of the deceased Tamilmani have filed MCOP No.19 of 2006 and the wife of the Tamilmani has filed MCOP No.53 of 2006 claiming compensation of Rs.30,00,000/- and Rs.40,00,000/- respectively.

3. The Tribunal framed the following issues for consideration:

- (i) On whose negligence, the accident had happened?
- (ii) Whether the claimants are entitled to receive the compensation from the respondents and if so, to what extent?

4. On the side of the claimants, Pws 1 to 3 have been examined and Exs.P.1 to P9 have been marked. On the side of the appellant Insurance Company, RWs1 to 3 have been examined and Exs.R1 and R2 were marked.

5. Heard both sides.

6.The learned counsel for the appellant / Insurance Company submitted that the Tribunal erred in considering the earnings of the deceased at higher level, ignoring the net pay

and assessing a dependency much higher than the justifiability. He further submitted that fastening the liability on the insurer / appellant Insurance Company herein has no legal basis and hence, the findings rendered by the Tribunal have to be set-aside.

7. On the other hand, the learned counsel for the respondents would submit that the award passed by the Tribunal is perfectly valid and does not require any interference of this Court, since the same is based on evidence and documents available on record.

8. To controvert the contentions raised, it is necessary to look into the parameters on which the Tribunal has rendered its findings and awarded the compensation.

9. The Tribunal, after framing issues, marking documents and analysing the evidence adduced, has fastened the liability on the appellant herein. Further, the Tribunal has taken note of the evidence of PW 1 and the nexus between the evidences of RW1 and RW 2 and held that the driver of the lorry drove the vehicle in a rash and negligent manner and caused the accident. Further, the Tribunal rightly taken note of the contents of the First Information Report and the Motor Vehicle Inspector's Report, wherein they clearly explained the manner of accident and other ancillary issues thereon. The documents filed on the side of the claimants support the contents of FIR as well as the report of the Motor Vehicles Inspector. Further, the Tribunal has taken note of a fact that the Insurance Company did not file any application before the Tribunal to get themselves impleaded. Hence, the findings on negligence rendered by the Tribunal are perfectly valid and the same are confirmed as such.

10. As far as the quantum of compensation awarded by the Tribunal is concerned, it has to be pointed out that the loss of income and other heads are awarded based on documentary proof, which are equated with the settled principles laid down in the decisions of the Supreme Court as well as this Court. Hence, the same requires no interference.

11. Thus, the findings rendered by the Tribunal to the effect that Respondents 1 & 2 herein (father and mother of the deceased Tamilmani) in CMA No.3073 of 2007 are entitled to receive Rs.3,21,000/- each, as compensation, and the 1st respondent herein (wife of the deceased) in CMA No.3074 of 2007 is entitled to receive Rs.10,00,000/- as compensation, are confirmed as such.

12. In the result, these Civil Miscellaneous Appeals are dismissed. No costs. The appellant (in both cases) /

Insurance Company shall deposit the entire compensation amount (s), along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount(s) to the Savings Bank Account(s) of the claimants / Respondents 1& 2 in CMA No.3073 of 2007 and Respondent 1 in CMA No.3074 of 2007 herein, within one week thereafter, through RTGS, as per the ratio of apportionment made by the Claims Tribunal.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

srk / vrn

To

1. The Motor Accident Claims Tribunal / Subordinate Court
Pollachi

Copy to

The Section Officer
V.R.Section
Madras High Court
Chennai 104

+2 CCS to Mr.N.Vijayaraghavan, Advocate sr 55111, 55110.
+1 CC to Mr.M.N. Balakrishnan, Advocate sr 55668
+1 CC to Mr.M.Parthasarathy, Advocate sr 54408.

C.M.A.Nos.3073 and 3074 of 2007

SJ(CO)
SP(25/10/2019)

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