

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.1154 to 1157 of 2013

and

MP.Nos.1,1,1 and 1 of 2013

Royal Sundaram Alliance Insurance Co. Ltd.,
TVS Co-operative Building,
37, Krishna Rao Tank Street,
Madurai 625 001.

...Appellant in all CMAs/2nd Respondent

vs.

1.Annadurai 1st Respondent/Petitioner

2.Senthilvel 2nd Respondent/1st Respondent

... Respondents in CMA.No.1154 of 2013

1.Prakash 1st Respondent/Petitioner

2.Senthilvel 2nd Respondent/1st Respondent

... Respondents in CMA.No.1155 of 2013

1.Kumar 1st Respondent/Petitioner

2.Senthilvel 2nd Respondent/1st Respondent

... Respondents in CMA.No.1156 of 2013

1.Karuppannan 1st Respondent/Petitioner

2.Senthilvel 2nd Respondent/1st Respondent

... Respondents in CMA.No.1157 of 2013

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COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 12.07.2012 passed in MCOP.Nos.268 of 2009, 269 of 2009, 270 of 2009 and 271 of 2009, on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Rasipuram.

For Appellant : Mr.M.Krishnamoorthy
(in all CMAs)

For Respondents : Mr.Ma.P.Thangavel for R1
(in all CMAs) Exparte for R2

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

The appellant / Royal Sundaram Alliance Insurance Company, the second respondent in MCOP.Nos. 268 of 2009, 269 of 2009, 270 of 2009 and 271 of 2009 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Rasipuram has filed the present appeals. The first respondent in all the appeals filed their respective claim petitions under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the injuries sustained by them in a road accident on 12.08.2009.

2. The parties are referred to as per their ranking before the Tribunal and at appropriate places their ranks in the present Civil Miscellaneous Appeal would also be indicated.

3. The case of the claimants in nutshell is as follows:

On 12.08.2009, the claimant in MCOP.No.269 of 2009 was riding his Hero Honda motorcycle bearing Registration No. TN 38 AB 1521 along with the claimants in MCOP.Nos. 268 of 2009, 270 of 2009 and 271 of 2009 as pillion riders on Rasipuram - Attur main road and at about 02.30 pm, when they were nearing Attyampatty Junction, a speeding car bearing Registration No. TN 58 U 3535 belonging to the first respondent and insured with the present appellant hit them, as a result of which, the claimants sustained grievous injuries. According to the claimants, the rash and negligent driving of the driver of the car belonging to the first respondent was the cause of the accident and that since the said car was insured with the present appellant, the owner and the insurer of the car are jointly and severally liable to pay compensation.

4. The owner of the car remained absent before the Tribunal and therefore he was set exparte. The Royal Sundaram Alliance Insurance Company contested the claim petition on all the grounds available to the insured. The learned Motor Accident Claims Tribunal / Subordinate Judge, Rasipuram after analysing the evidence on record, awarded compensation of Rs.36,775/-, Rs.72,925/-, Rs.94,775/- and Rs.2,59,585/- together with interest at the rate of 7.5% per annum to the claimants in MCOP.Nos. 268 of 2009, 269 of 2009, 270 of 2009 and 271 of 2009

respectively. He further concluded that the liability of the owner of the car and its insurer is joint and several. Aggrieved over the orders passed by the Tribunal, the Royal Sundaram Alliance Insurance Company has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.M.Krishnamoorthy, learned counsel appearing for the Royal Sundaram Alliance Insurance Company contended that all the claimants including the rider of the two wheeler were under the influence of alcohol and the same was the cause of the accident and therefore, the Tribunal was wrong in fastening liability on the part of the owner and the insurer of the car. He also contended that the Tribunal had awarded exorbitant amount towards compensation in all the cases.

6. Per contra, Mr.Ma.P.Thangavel, learned counsel appearing for the claimants in all the cases contended that the Tribunal after considering all the aspects of the cases, fixed the negligence on the part of the driver of the car and awarded just compensation and the same cannot be said to be on the higher side.

7. As far as the negligence aspect is concerned, it is true that all the claimants were travelling in the same motorcycle. However, there is no evidence to show that they were under the influence of alcohol. It is also not established that the rider of the two wheeler was rash and negligent in riding his vehicle. In fact, all the claimants examined themselves and they have clearly spoken to about the rash and negligent driving of the driver of the car belonging to the first respondent.

8. The learned counsel appearing for the appellant contended that the First Information Report which was registered against the driver of the car was referred as mistake of fact and therefore, the Tribunal should not have fixed the entire negligence on the part of the driver of the car. It is pertinent to point out that the Tribunal, after considering the oral and documentary evidence adduced on both sides, had held that the driver of the car was rash and negligent in driving his vehicle. It is also seen from the records that the final report was not filed before the concerned Magistrate Court. Moreover, in the discharge summaries of the claimants it is not mentioned that the rider of the motorcycle and other claimants were drunk at the time of the accident. In fact, the Tribunal had dealt with the negligence aspect in extenso and all the observations made by the Tribunal are perfectly in order and no interference is warranted by this Court.

9. Moreover, a perusal of the orders passed by the Tribunal also shows that just compensation was awarded in all the cases, considering the nature and severity of the injuries sustained by the claimants and in the facts and circumstances, the appeals fail and are dismissed.

10. In the result,

(i) The Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) The orders passed by the Tribunal is upheld.

(iii) The appellant / Royal Sundaram Alliance Insurance Company is directed to deposit the compensation awarded by the Tribunal i.e., Rs.36,775/-, Rs.72,925/-, Rs.94,775/- and Rs.2,59,585/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.Nos. 268 of 2009, 269 of 2009, 270 of 2009 and 271 of 2009 respectively on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Rasipuram within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimants are at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
The Subordinate Court,
Rasipuram.

2. The Section Officer,
V.R Section,
High Court, Madras

+4cc to M/s.M.Krishnamoorthy, Advocate sr.87301 to 87304
+1cc to M/s.Ma.P.Thangavel, Advocate sr.87532

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and

MP.Nos.1,1,1 and 1 of 2013

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