

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.08.2019
CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2419 of 2009
& M.P.No.1 of 2009

The Manager,
Royal Sundaram Alliance Insurance Co.Ltd.,
"Sundaram Towers"
No.45 & 46, Whites Road,
Chennai - 600 014. Appellant

Vs.

1. Govindan, s/o.Chinnaiah
2. Chittal, w/o. Govindan
3. R.M.Venkatachalam, s/o.Murugasamy
4. The Manger,
New India Assurance Co. Ltd.,
T.P.Cell, No.45, Moore Street,
Chennai - 1.
5. M.Lakshmi, w/o.K.Murali

(Respondents 3 & 5 were
Ex-parte in the lower Court) ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under
Section 170 of the Motor Vehicles Act, 1988, against the
Judgment and Decree dated 24.04.2009 made in MCOP.No.190 of
2006 on the file of the Motor Accident Claims Tribunal,
Principal District Court, Tiruvallur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.M.Krishnamurthy (for R4)

J U D G M E N T

The appellant herein is the Insurer of the lorry. The
parents of the deceased are respondents 1 and 2 herein. The 3rd
respondent herein is the owner of the car. The 4th respondent
herein is the insurer of the car. The 5th respondent herein is
the owner of the lorry.

2. The brief facts of the case are as follows;

On 03.08.2006 at about 4.15 a.m, one Kumar, aged 28, was driving the Toyota Quails Car bearing registration number TN 31 X 9936 and while the vehicle was proceeding near Kalroadpalli, Harijanawada, the lorry bearing registration number TN 23 H 3177, which was driven by its driver in a rash and negligent manner, hit against the Toyota Qualis car. Due to the said impact, Kumar was taken to the hospital and later, he died in hospital. Stating that the accident had occurred only due to the rash and negligent driving of the lorry by its driver and the driver-Kumar being employed with the 3rd respondent herein, the parents of Kumar, the legal heirs, have filed a claim petition before the Tribunal against the owners of the Toyota Qualis and lorry and the insurer of both the vehicles.

3. The Tribunal has framed the following issues for consideration.

- a) On whose negligence, the accident had happened?
- b) Whether the claimants are entitled to the compensation? and if so, to what extent?

4. While answering the above issues, the Tribunal has examined two witnesses on each side and marked five Exhibits on the side of the claimants and four Exhibits on the side of the respondents and ultimately fastened the liability on the owner and insurer of the lorry. Challenging the findings on negligence as well as quantum, the Insurer of the lorry has filed this Civil Miscellaneous Appeal.

5. Heard the learned counsel for the appellant / Insurance Company and the learned counsel for the 4th respondent / insurer of the car and perused the records.

6. Despite notice, respondents 1 and 2 are not present before this Court. The appeal itself is taken up for final disposal, in the absence of respondents 1 and 2, since the disposal of this appeal will not in any way affect their rights.

7. The learned counsel for the appellant / Insurance company/ insurer of the lorry has submitted that, the Tribunal ought not to have fixed the negligence only on the part of the lorry driver, since Ex.P1 FIR was registered against the deceased car driver also. He further submitted that fixing the monthly income at Rs.4500/- is not justified; in any event the award passed by the Tribunal at Rs.4,50,000/- is on the higher side.

8. Per contra, the learned counsel for the 4th respondent insurer of the car submitted that, the Tribunal has taken note of the evidence and documents on record, in a proper perspective and has awarded the compensation, which is nothing but just and hence no interference is required.

9. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

10. A perusal of the award of the Tribunal would go to show that the factum of accident was discussed in detail by way of evidence and documents adduced by both sides. The Tribunal has analysed Exhibits P1 and Exhibit R1-FIR and Exhibit P2-final report in detail and has held that the accident had happened due to the negligent driving of the lorry by its driver. The Tribunal has also observed that the accident would have been averted, had the lorry driver been careful and cautious in his driving. The Tribunal has also held that there was no eyewitness to the accident. Observing so, the Tribunal has ultimately fastened the negligence on the lorry driver.

11. This Court is of the opinion that the findings rendered by the Tribunal on negligence are based on evidence and documents adduced by the both sides and though there are evidence and documents produced / marked on the side of the appellant herein, they do not controvert the claim made by the claimants. In the absence of any contra evidence being available on record, this Court, sitting in the appellate stage, cannot reappreciate the facts and evidence once again and come to a different conclusion than the one arrived at the Tribunal. Hence the findings of the Tribunal on negligence are confirmed as such.

12. As far as the quantum of compensation is concerned, the Tribunal has taken the monthly income of the deceased at Rs.4,500/-, deducted 1/3rd of the amount towards personal expenses of the deceased, adopted the multiplier of 11 and arrived at the loss of income at Rs.3,96,000/-. The Tribunal has also awarded sums of Rs.50,000/- and 4,000/- towards medical expenses and funeral expenses, respectively.

13. The quantum arrived by the Tribunal is based on weightage of evidence, probabilities of the case and settled principles of law. No new defence is taken by the appellant herein. The grounds raised by the appellant herein are untenable. Hence, the award passed by the Tribunal cannot be said to be on the higher pedestal.

14. In the result, the appeal filed by the Insurance Company is dismissed. No Costs. The appellant / Insurance Company is directed to deposit the entire compensation amount, along with interests 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 deposited amount to the Savings Bank Accounts of the claimants / respondents 1 and 2, through RTGS,

one week thereafter, as per the ratio of apportionment made by the Claims Tribunal. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

srk
To

The Judge, Motor Accident Claims Tribunal
Principal District Court,
Tiruvallur.

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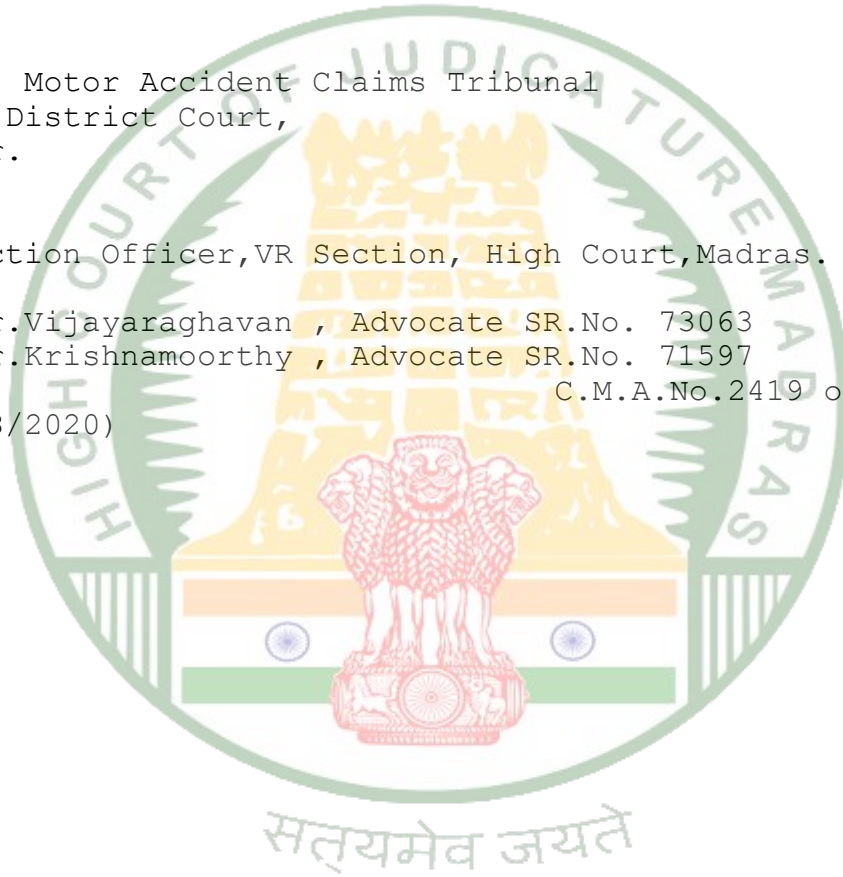
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.Vijayaraghavan , Advocate SR.No. 73063

+1cc to Mr.Krishnamoorthy , Advocate SR.No. 71597

C.M.A.No.2419 of 2009

A.SK(27/08/2020)



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