

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1365 of 2011 and
M.P.No.1 of 2011

The New India Assurance Co. Ltd.,
Divisional Office,
Premier Complex,
Five Roads,
Salem - 636 016.

...Appellant / 2nd Respondent

Vs.

1.Maheswari
2.Moorthy Eswaran (Minor)
rep. by mother & NF Maheswari
3.Malliga
4.Raju
5.Elumalai

...Respondents/Petitioners /
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 16.07.2009, in M.C.O.P.No. 59 of 2006 on the file of the Motor Accidents Claims Tribunal, (I Additional District Judge) at Salem.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.V.R.Kamalanathan
for R1 & R2

Mr.R.Neelakandan
for R5

R3 - No appearance

R4 - Not ready in notice

JUDGMENT

This Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 59 of 2006 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge) at Salem. They have filed the present appeal on the point of their liability to pay compensation as well as the quantum of compensation awarded by the Tribunal.

2. The brief case of the appellants 1 to 4/claimants is as follows:

On 08.05.2005, at about 05.00 am, the deceased Murugan was travelling as a co-driver in a lorry bearing Registration No. TN 30 H 9502 on Allapula - Erunakulam NH road, near Thuravoor community Hall, in front of Sri Krishna Medicals. At that time, the driver of the lorry bearing Registration No. TN 30 H 9502, belonging to the fifth respondent herein, drove the vehicle rashly and negligently and hit another lorry bearing Registration No. KL 11 1737, as a result of which, the deceased Murugan sustained grievous injuries all over his body and died on the spot. According to the appellants 1 to 4/claimants, the rash and negligent driving of the driver of the lorry bearing Registration No. TN 30 H 9502 was the cause of the accident, and that, since, the said lorry was insured with the present appellant, both the owner of the said lorry and the present appellant, are jointly and severally liable to pay compensation of Rs.10,00,000/- to them.

3. The learned Tribunal, after analysing the evidence on record, awarded compensation of Rs.5,75,900/- together with interest at the rate of 7.5% per annum to the appellants 1 to 4/claimants. Aggrieved over the quantum of compensation awarded by the Tribunal, the New India Assurance Company have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellant would contend that the driver of the offending vehicle does not have any valid driving licence to drive the nature of vehicle involved in the accident. He would also contend that the driver of the offending vehicle does not possess endorsement as required in the policy and therefore, the Insurance Company cannot be fastened with liability. Mr. Shanmugam (RW2), Supervisor, Regional Transport Office has stated that, at the time of the accident, the driver of the offending vehicle possessed necessary batch and endorsement. Accordingly, in view of the existing positive evidence, the Tribunal has rightly come to the conclusion that the driver of the offending vehicle had valid driving licence with endorsement to drive the nature of the vehicle involved in the accident. The said finding of the Tribunal is based upon the documentary and oral evidence of Mr. Shanmugam (RW2), Supervisor, Regional Transport Office and therefore, the said finding of the Tribunal does not warrant any interference.

5. The learned counsel appearing for the Insurance Company further questioned the rash and negligence fixed on the driver of the lorry bearing Registration No. TN 30 H 9502. However, after going through the evidence of Maheswari (PW1), FIR (P1)

and charge sheet (Ex.P2), it can be seen that, the lorry bearing Registration No. KL 11 1737 was parked on the extreme left end of the road. Only due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 30 H 9502, it dashed against the parked lorry, and as such, the Tribunal has rightly appreciated the oral and documentary evidence and accordingly rendered the finding that the accident has taken place only due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 30 H 9502. Hence, as the factual position being so, in the absence of any contra evidence to support the case of the appellant, there is no need to interfere with the finding of the Tribunal, in this regard.

6. On the point of quantum of compensation, after going through the award passed by the Tribunal, this Court finds that the award is just and reasonable and therefore, the contention of the learned counsel appearing for the Insurance Company that the compensation awarded by the Tribunal is excessive could not be accepted. In view of the above, the plea raised by the appellant stands negative. Therefore, the compensation awarded by the Tribunal is hereby confirmed.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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

(iii) It is brought to the notice of this Court by the learned counsel appearing for the appellant that, at the time of admission, the entire compensation awarded by the Tribunal was deposited to the credit of M.C.O.P.No.59 of 2006, on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Salem.

(iv) The respondents 1, 3 and 4 herein are at liberty to withdraw the same, as apportioned by the Tribunal, after following due process of law.

(v) The second respondent herein is a minor and therefore, his share is ordered to be deposited in any one of the Nationalized bank till he attains majority and the first respondent herein is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1) The Motor Accidents Claims Tribunal,
The I Additional District Judge,
Salem.

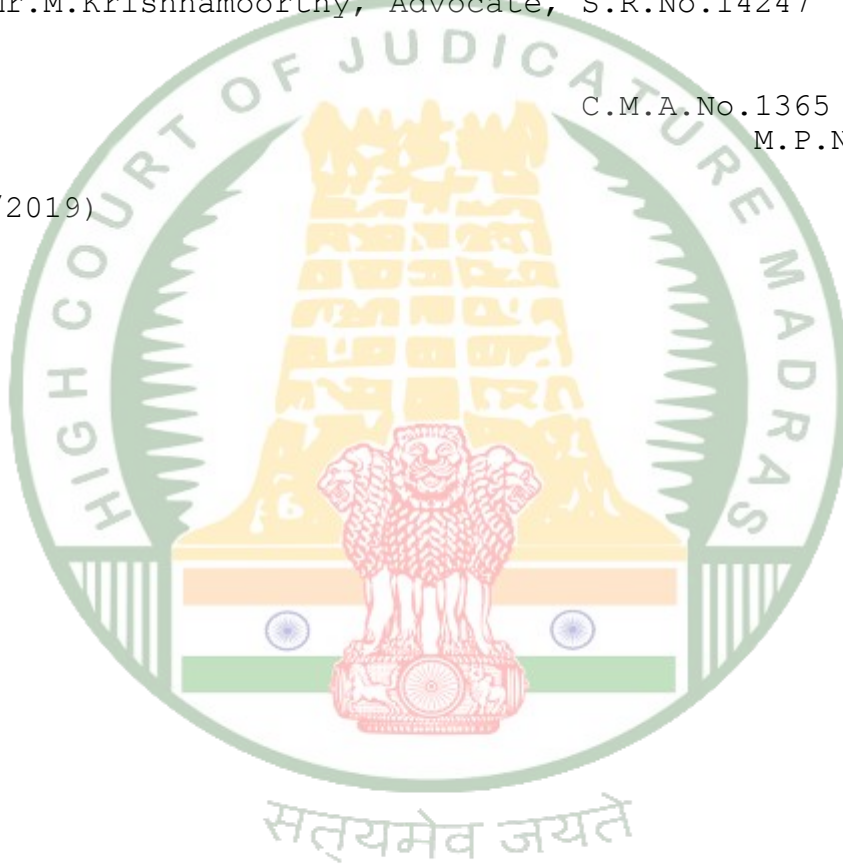
2) The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.V.R.Kamalanathan, Advocate, S.R.No.14881

+1 cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.14247

C.M.A.No.1365 of 2011 and
M.P.No.1 of 2011

AK(CO)
SSM(30/05/2019)



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