

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.NOS.1653 AND 1654 OF 2013

AND

M.P.NOS.1 + 1 OF 2013

C.M.A.No.1653 of 2013 :

The Manager,
Third Party Claims Cell,
National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai-2.

... Appellant/Respondent

vs.

1.N.Kamala

2.Minor Manikandan

3.Minor Manjula

4.Saroja

5.J.Devi

(Respondents 2 and 3 are
represented by their mother
& guardian N.Kamala)

... Respondents/Petitioners

C.M.A.No.1654 of 2013 :

The Manager,
Third Party Claims Cell,
National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai-2.

... Appellant/Respondent

vs.

1.Sethupathy

... Respondent/Petitioner

2.J.Devi

... Respondent/Respondent

COMMON PRAYER:

Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 03.12.2011 made in M.A.C.T.O.P.Nos.11 of 2010 and 124 of 2009 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Chengalpattu.

For Appellants : Mr.M.Krishnamoorthy
[in both appeals]

For Respondents : No Appearance

COMMON JUDGMENT

The Appellant, National Insurance Company in both the appeals, is the 2nd respondent in M.A.C.T.O.P.Nos.11 of 2010 and 124 of 2009 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Chengalpattu.

2. The claimants filed their respective claim petitions under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the death of one Narayanan and Rs.1,00,000/- for the injuries sustained by one Sethupathy in a road accident on 28.05.2009.

3. The case of the claimant is as follows:

On 28.05.2009, the deceased Narayanan was driving a Van bearing Registration No.TN-09-AP-6835 along G.S.T.Road, near Villupuram with one Sethupathy as a Cleaner. At about 1.00 a.m., he hit a lorry bearing Registration No.TN-27-Y-2039 which was parked on the road without any indicator light and while driver Narayanan died on the spot the cleaner sustained injuries and was rushed to Hospital. According to the claimants, the stationary lorry belonging to the 1st respondent was the cause of the accident as the same was parked on the middle of the road without any indication light and therefore, the owner of the lorry and the insurer are jointly and severally liable to pay the compensation.

4. Heard Mr.M.Krishnamoorthy, learned counsel for the appellant. No appearance for the respondents.

5. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Chengalpattu while awarding compensation of Rs.5,70,000/- and Rs.20,350/- to the claimants in M.C.O.P. Nos.11 of 2010 and 124 of 2009 respectively together with

interest at the rate of 7.5% per annum fixed contributory negligence on the part of the deceased driver Narayanan to the extent 50%. Thus the owner of the lorry and the Insurance Company were jointly and severally made liable to pay 50% of the award amount. Aggrieved over the orders passed by the Tribunal, the National Insurance Company has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

6. The learned counsel for the appellants contended that the Tribunal was wrong in fixing negligence on the part of the driver of the lorry only to the extent of 50%, since the driver had parked the lorry on the middle of the road unmindful of vehicular traffic. Therefore, he prayed for setting aside the orders passed by the Tribunal and to allow the appeals.

7. A perusal of the records shows that the First Information Report was registered against the driver of the van and since the driver of the van died in the accident, the case was closed. However, based on the evidence adduced on both sides, the Tribunal had held that (i) Since the lorry was parked on the road, the owner and insurer of the lorry are also liable to pay compensation, (ii) The accident took place during broad day light i.e., 1.00 p.m., and the driver of the van could have seen the lorry that was parked on the road, (iii) Had the driver of the van driven his vehicle carefully, the accident could have been avoided. Thus, the Tribunal fixed negligence in the ratio 50:50. In the facts and circumstances, the orders passed by the Tribunal fastening liability on the part of the Insurance Company to the extent 50% cannot be found fault with.

8. In the result,

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

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

(iii) The present appellant/National Assurance Company Limited is directed to deposit 50% of the total compensation amount awarded by the Tribunal i.e., Rs.2,85,000/- (less the amount already deposited if any) 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 M.C.O.P.No.11 of 2010 and Rs.10,175/- (less the amount already deposited if any) 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 M.C.O.P.No.124 of 2009 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Chengalpattu, within a period of four weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit being made, the claimants are at liberty to withdraw the same, after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssn

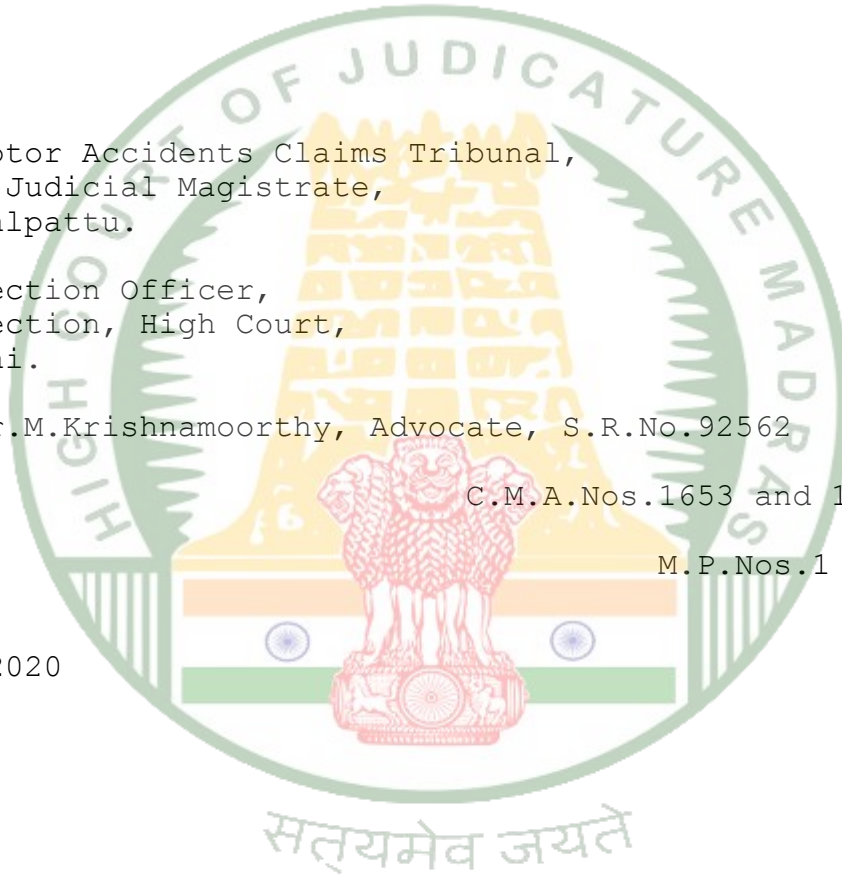
To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Chengalpattu.
2. The Section Officer,
V.R.Section, High Court,
Chennai.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.92562

C.M.A.Nos.1653 and 1654 of 2013
and
M.P.Nos.1 + 1 of 2013

PP(CO)
CS/27/07/2020



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