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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.04.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2340 of 2011
and MP.No.1 of 2011

The New India Assurance Company Ltd.,
Transport Nagar,
Jaipur, Rajasthan.

..Appellant/2nd Respondent

Vs.

1.Parimala
2.Girimurugan (Minor)
rep.by his mother and
guardian Parimala

..1st & 2nd Respondents/Claimants

3.Sundaram Jai
4.K.Selvaraj

5.National Insurance Company Ltd.,
No.91-D, Chetty Street,
Tiruchengodu Town & Taluk,
Salem District.

6.The Oriental Insurance Company Ltd.,
Dwaraga, 2nd floor,
No.36, N.H.Road,
Chennai - 600 034. ..Respondents 3 to 6/Respondents/1,3 to 5

[R3 & R4 set ex-parte in the lower Court,
Hence, notice to them is dispensed with]

[R6 is given up as not a necessary party]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 against the award and decree dated
23.12.2010 made in M.C.O.P.No.305 of 2006 on the file of the
Motor Accident Claims Tribunal, Sub-Court, Sankagiri.

For Appellant : Mr.R.Sivakumar
For Respondents : Mr.C.Kulanthaivel (for R1 & R2)
: Ex-parte - R3 & R4
: Mr.J.Chandran (for R5)
: Given up - R6



JUDGMENT

WEB COPY The insurance company has come up with this appeal questioning their liability to pay 80% of the compensation amount determined by the Tribunal award dated 23.12.2010 made in M.C.O.P.No.305 of 2006 to the claimants.

2.The first and second respondents are the claimants who have filed the claim petition before the Tribunal contending that the husband of the first claimant was the owner-cum-driver of the lorry bearing Registration No.KA-01-AA-7998. When the lorry was coming from Nashik to Tiruchirapalli with pipe load, the lorry bearing Registration No. RJ-32-G-2977 owned by the third respondent in this appeal and insured with the appellant in this appeal (second respondent in the claim petition) was driven by its driver in a rash and negligent manner and attempted to overtake the lorry owned by the husband of the first claimant. In that process, there was a collision between the lorry owned by the husband of the first claimant and the aforesaid lorry No. RJ 32 G 2977 and another lorry bearing No. KA-01-AC 2899 belonging to the fourth respondent herein and insured with the fifth respondent herein. In the impact, the husband of the first claimant died on the spot. At the time of accident, the deceased was 42 years. The claimants have therefore filed the claim petition claiming compensation of Rs.10 lakhs.

3.The appellant/ Insurance company has preferred the appeal both on the ground of quantum as well as on the ground that the negligence fixed on the driver of the Lorry bearing Regn.No. RJ-32-G-2977 at 80% is onerous.

4.After hearing the submission of the learned counsel and after going through the evidence, it is seen that in connection with the same accident, as against the award passed in another Claim Petition, CMA.No.2341 of 2011 has been filed before this Court and ultimately, the dispute was settled before the Lok Adalat.

5.On perusing the evidence adduced before the Tribunal, taking note of the documents Ex.P1, P2/translated copy, Ex.P10/charge sheet, Ex.P11/translated charge sheet copy, Ex.P14/MV report, the Tribunal has held that the accident had taken place due to the rash and negligence on the part of the driver of the Lorry bearing Regn.No. RJ 32 G 2977 belonging to the third respondent herein and the lorry bearing Registration No. KA-01-AC-2899 belonged to the fourth respondent herein and fixed the liability at the ratio of 80% : 20%.



6. After going through the oral and documentary evidence, it is seen that based upon the evidence adduced on behalf of the claimant before the Tribunal, the Tribunal rendered a finding that due to the negligence of the driver of the Lorry bearing Regn.No.RJ-32-G-2977 the accident had mainly occurred. A specific finding was rendered that the lorry bearing Registration No. RJ 32 G 2977 was proceeding first, followed by the lorry driven by the deceased and behind that lorry, the lorry No. KA 01 AC 2899 belonging to the fourth respondent and insured with the fifth respondent was proceeding. Since the lorry belonging to the appellant insurance company, which was proceeding first, had suddenly applied brake, the lorry driven by the deceased hit the backside of the lorry bearing Regn.No.RJ-32-G-2977 belonging to the appellant and at the same time, the lorry bearing No. KA 01 AC 2899 belonging to the fourth respondent hit the lorry owned by the appellant and it resulted in the accident. Such a factual finding rendered by the Tribunal and the consequential fixation of the liability at 80:20 is found to be just and reasonable and it does not warrant interference by this Court. Hence, the said finding with regard to the composite negligence fixed by the Tribunal is hereby confirmed. The quantum of compensation awarded by the Tribunal taking note of the monthly income of the deceased at Rs.10,000/-, giving 1/3rd deduction and adopting multiplier '14' to arrive at a compensation of Rs.10 lakhs is found to be fair and reasonable. Hence, the appeal is liable to be dismissed.

7. It is represented by the counsel that at the time of admission this Court granted an interim stay and the appellant was directed to deposit the entire amount of compensation but they deposit 50% of amount. Hence, they are directed to deposit the balance award amount, within a period of eight weeks along with interest 7.5%. The claimants are permitted to withdraw the amount, as apportioned by the Tribunal.

8. With the above observations and directions, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To
The Subordinate Judge
Motor Accident Claims Tribunal,
Sankagiri.

+1 cc to M/s.R.Sivakumar, Advocate Sr.No. 39759
+1 cc to Mr.C.Kulanthaivel, Advocate Sr.No.39683
+1 cc to Mr.J.Chandran, Advocate Sr.No.40026

AKM/05.11.19/4P-6C /

CMA No.2340 of 2011
and
Mp.No.1 of 2011