

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2423 of 2015

and

M.P.No.1 of 2015

Royal Sundaram Alliance Insurance Company Limited,
Sundaram Towers, No.46, Whites Road,
Chennai - 600 014. ... Appellant/4th Respondent in Tribunal

Vs.

1.R.Valli

2.C.Rathinavel

3.C.Dhinakaran

4.The New India Assurance Company Limited,
No.1, Bharathi Road, Arcot Woodlands Building,
Cuddalore.

5.S.Ashokkumar

.. Respondents/Petitioners 1, 2 and RR 1, 2, 3 in Tribunal

(R3 & R5 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.11.2014 made in M.C.O.P.No.1396 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellant : Mr.M.Krishnamoorthy

R1 : NA

RR3 and 5 : Exparte in Tribunal below

R 2 : Not Ready in Notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 05.11.2014 made in M.C.O.P.No.1396 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

2.The appellant is the 4th respondent in M.C.O.P.No.1396 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of their son viz.,R.Rajkumar, who died in the accident that took place on 24.04.2011.

3.According to the respondents 1 and 2/claimants, on 24.04.2011 at 11.00 P.M., while the deceased was riding the motorcycle belonging to the 3rd respondent on Sellankuppam road, hit behind the lorry belonging to the 5th respondent and caused the accident. Due to the injuries sustained in the said accident, the deceased died on the spot. Therefore the respondents 1 and 2/claimants filed claim petition claiming compensation against the respondents 3 to 5 and appellant/Insurance Company.

4.The 4th respondent/Insurance Company, being the insurer of the motorcycle filed counter statement and denied all the averments made by the respondents 1 and 2/claimants. According to the 4th respondent/Insurance Company, the deceased only drove the motorcycle rashly and negligently and caused the accident. The deceased was a tort-feasor and hence compensation cannot be claimed by the respondents 1 and 2/claimants. The deceased has no valid driving license at the time of accident and the 3rd respondent, owner of the motorcycle permitted the deceased to drive the motorcycle without valid driving license and violated the policy condition. The driver of the lorry belonging to the 5th respondent parked the same without any warning signal. Due to the lorry driver's negligence only, the accident occurred. Hence, there can be no liability against the 4th respondent. The quantum of compensation claimed by the respondents 1 and 2/claimants is highly excessive and prayed for dismissal of the claim petition.

5.The appellant/Insurance Company, being the insurer of the lorry belonging to the 5th respondent filed counter statement and denied all the averments made by the respondents 1 and 2/claimants. According to the appellant/Insurance Company, the driver of the lorry belonging to the 5th respondent does not possess a valid driving license at the time of accident. The

lorry was parked on the extreme left side of the road with all arrangements to caution the vehicles and inspite of the same, the deceased came in a rash and negligent manner and dashed against the lorry and caused the accident. Hence, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 and 2/claimants. The respondents 1 and 2/claimants have to prove the avocation and income of the deceased by valid documents. In any event, the quantum of compensation claimed by the respondents 1 and 2/claimants is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, on behalf of the respondents 1 and 2 /claimants, two witnesses were examined as P.W.1 and P.W.2 and 17 documents were marked as Exs.P1 to P17. On behalf of the appellant/Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and two documents were marked as Exs.R1 and R2.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligence on the part of the deceased as well as negligence on the part of the driver of the lorry belonging to the 5th respondent and fixed negligence in the ratio 10:90 respectively and awarded a total sum of Rs.13,60,000/- as compensation to the respondents 1 and 2/claimants and directed the respondents 3 and 4 being the owner and insurer of the motorcycle jointly and severally to pay 10% of the award amount i.e., Rs.1,36,000/- and the 5th respondent and appellant, being the owner and insurer of the lorry jointly and severally to pay 90% of the award amount i.e., Rs.12,24,000/-.

8.Challenging the said award dated 05.11.2014 made in M.C.O.P.No.1396 of 2011, the appellant-Insurance Company has come out with the present appeal.

9.Though the appellant/Insurance Company has raised many grounds in the grounds of appeal, at the time of hearing, the learned counsel appearing for the appellant-Insurance Company restricted his arguments with regard to negligence alone. The learned counsel appearing for the appellant/Insurance Company contended that the lorry was parked at the extreme left side of the road with signal. The deceased drove the motorcycle in a rash and negligent manner and dashed against the parked lorry and caused the accident. The accident occurred only due to rash and negligent driving by the deceased. The Tribunal erroneously held that the driver of the lorry was negligent and fixed 90% liability on the part of the appellant/Insurance Company and prayed for setting aside the award fixing 90% liability on the part of the appellant/Insurance Company.

10. Heard the learned counsel appearing for the appellant-Insurance Company and perused the entire materials on record.

11. From the award passed by the Tribunal, it is seen that the Tribunal considering Ex.P1/copy of F.I.R. and the evidence of P.W.2/eye-witness, held that the deceased as well as the driver of the lorry belonging to 5th respondent are responsible for the accident and fixed 10% negligence on the part of the deceased and 90% on the part of the driver of the lorry belonging to the 5th respondent. The appellant has not examined the driver of the lorry or any other eye-witness to disprove the contention of respondents 1 and 2 and the evidence of P.W.2 and F.I.R. In such circumstances, the finding of the Tribunal is not interferred with by this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.13,60,000/- awarded by the Tribunal as compensation to the respondents 1 and 2/claimants, along with interest and costs is confirmed. The respondents 3 and 4 being the owner and insurer of the motorcycle are jointly and severally directed to pay 10% of the award amount i.e., Rs.1,36,000/- and the 5th respondent and appellant, being the owner and insurer of the lorry are jointly and severally directed to pay 90% of the award amount i.e., Rs.12,24,000/-, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1396 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

krk

To

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

Copy To : The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.M.Krishnamurthy, Advocate SR.No.103965

C.M.A.No.2423 of 2015

VG I(CO)
GMY(17/06/2020)



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