

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.4256 of 2019
and C.M.P.No.24080 of 2019

New India Assurance Co.Limited,
Motor Third Party Cell,
No.45, Moore Street, V Floor,
Chennai. ... Appellant/2nd Respondent

Vs

1.R.Parmeswari
2.P.Ramanujam ... Respondents 1 & 2/Petitioners 1 & 2
3.J.Prema Ammal ... 3rd Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act
against the judgment and decree dated 19.08.2016 made in
MCOP No.1635 of 2006 on the file of the Motor Accident
Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Mr.J.Chandran

JUDGMENT

This appeal has been preferred by the Insurance Company
against the award of a sum of Rs.3,00,000/- towards
compensation to the respondents 1 and 2, due to the death
of their son in a motor vehicle accident.

2.The case in brief, is as follows:

On 16.03.2006 at about 12.30 hours, the deceased
Aravind was playing opposite to his house at Manikavasagam
Street, Parri Nagar, Chennai-600 083. At that time, an
auto-rickshaw bearing Engine No.AEMBML01129, Chasis
No.MD2AA24ZZMWL16149, belonging to the third respondent
herein and insured with the appellant Insurance Company,
came in a rash and negligent manner and dashed against the
deceased. Due to the said impact, the deceased sustained
head injury and died on the spot. The father and mother of
the deceased filed a claim petition before the Tribunal,
claiming a sum of Rs.4,00,000/- as compensation. On
consideration of the materials and evidence available on
record, the Tribunal has awarded a lumpsum amount of
compensation at Rs.3,00,000/- with interest at the rate of

7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the auto- rickshaw, since the fact remained that the accident had occurred only due to the negligence on the part of the deceased. It is also submitted that there was no insurance coverage for the auto-rickshaw at the relevant point of time and hence the Insurance Company is not liable to pay compensation to the claimants. On the other hand, he has not disputed the quantum of compensation awarded by the Tribunal.

5.Since no order prejudicial to the interest of the respondents is going to be passed in this matter, notice to the respondents is waived.

6.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

7.Since the quantum of compensation is not disputed, this Court is not inclined to interfere with the same.

8.Ex.P1 is the First Information Report lodged by P.W.1/ first respondent / mother of the deceased, who is the eye-witness to the occurrence. She deposed before the Tribunal that on the date of accident, her son (deceased) was playing in front of her house at Manickavasagam Street on the side of the road and at that time, an unregistered auto-rickshaw came in a rash and negligent manner and dashed against the deceased and due to the same, the deceased sustained fatal injuries. It is seen that the evidence of P.W.1 corroborates with Ex.P1-FIR. No witnesses were examined or no documents marked on the side of the appellant Insurance Company to controvert the version of P.W.1 and the First Information Report. In the circumstances, the Tribunal held that the accident had occurred only due to the rash and negligent act on the part of the driver of the auto-rickshaw insured with the appellant insurance company and accordingly fixed the liability on the appellant Insurance Company, being the insurer for the auto-rickshaw. This Court is not inclined to interfere with the finding of the Tribunal with regard to fixing negligence on the part of the driver of the auto-rickshaw.

9. In respect of the contention put forth by the Insurance Company that the auto-rickshaw was not having the insurance coverage at the relevant point of time, the Tribunal has held that no evidence has been adduced on the side of the Insurance Company to show that the auto-rickshaw was not having the insurance coverage at the time of accident. But it should also be noted that the owner of the vehicle remained ex-parte before the Tribunal. He neither produced Registration Certificate and original Insurance Policy nor entered into the witness box. It was also put forth before the Tribunal on the side of the Insurance Company that the driver of the auto-rickshaw was not possessing the valid driving licence during the time of accident. It was further put forth on the side of the Insurance Company that the vehicle was not having the valid registration. None of these points have been clarified on the side of the owner of the vehicle, by making appearance before the Tribunal. Considering the facts and circumstances of the case, this Court deems it fit to direct the Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle. Accordingly, while confirming the quantum of compensation awarded by the Tribunal, this Court directs the appellant Insurance Company to pay the compensation to the claimant and thereafter recover the same from the owner of the vehicle, in accordance with law.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondents 1 and 2 / claimants are permitted to withdraw the same on making proper application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY
s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi/km

To

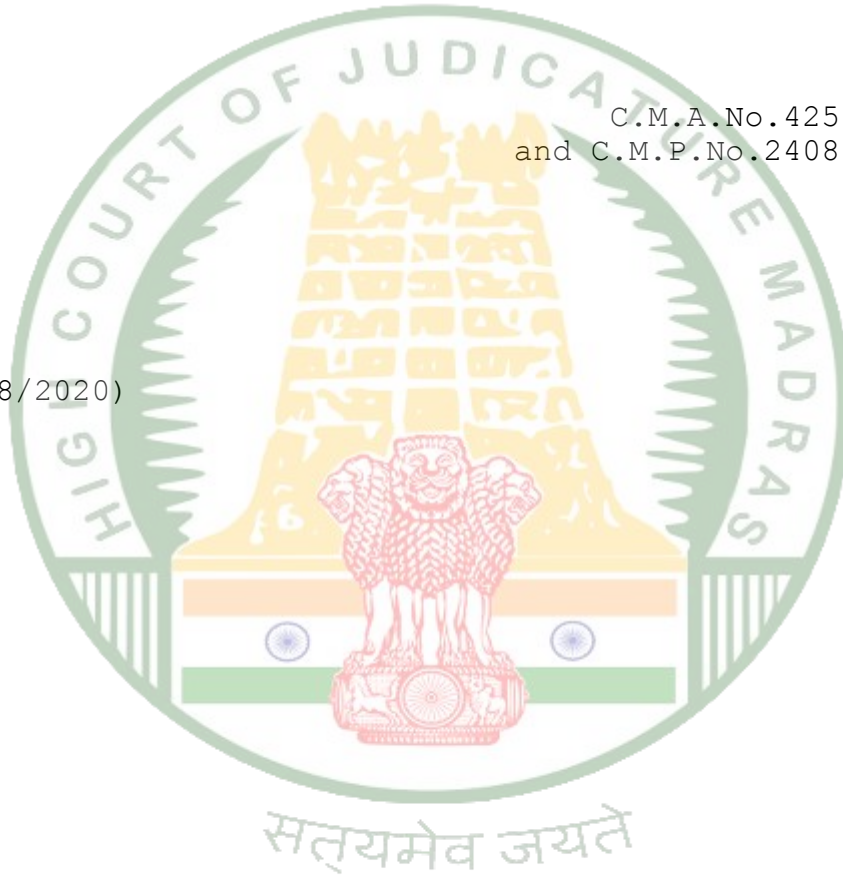
1.The Chief Judge,
Motor Accidents Claims Tribunal
(Small Causes Court), Chennai.

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

+1 CC to Mr.J.Chandran, Advocate sr 93679

C.M.A.No.4256 of 2019
and C.M.P.No.24080 of 2019

RJI (CO)
SP(19/08/2020)



WEB COPY