

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1376 and 1377 of 2019
and C.M.P.Nos.3855 & 3865 of 2019

The Oriental Insurance Co. Ltd.,
Imperial Road,
Cuddalore-2.

...Appellant in both appeals/
2nd Respondent

Vs.

1.Alamelu
2.Lakshmi
3.Anjammal

... Respondents 1 to 3/Claimants

4.Sheraton Builders Pvt. Ltd.,
No.6, Dev Regency, Gandhi Nagar,
Adayar,
Chennai 20.

... 4th Respondent/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common award dated 24.02.2004 made in M.C.O.P.Nos.26 & 27 of 2003 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Cuddalore.

For Appellant: Mr.M.Rajasekhar (in both appeals)

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the appellant-Insurance Company against the common award dated 24.02.2004 made in M.C.O.P.Nos.26 & 27 of 2003 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Cuddalore.

2.Both the appeals arise out of same accident and common award and hence, they are disposed of by this common judgment.

3.The appellant is the 2nd respondent in M.C.O.P.Nos.26 & 27 of 2003 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Cuddalore. The respondents 1 to 3 filed the said claim petitions, claiming a sum of Rs.15,00,000/- each as compensation for the death of M.Vellian and Chinnaponnu who died in the accident that took place on 20.05.2002.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 4th respondent and directed the appellant-Insurance Company as well as the 4th respondent to jointly and severally pay a sum of Rs.3,35,000/- and Rs.3,47,000/- as compensation to the respondents 1 to 3/claimants. Challenging the said common award dated 24.02.2004 made in M.C.O.P.Nos.26 & 27 of 2003, the appellant/Insurance Company has come out with the present appeals.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing negligence on the part of the driver of the lorry and the Tribunal ought to have seen that only due to negligence on the part of both the deceased, the accident had occurred. Both the deceased were sleeping on the road and invited the accident. The Tribunal erroneously fixed negligence on the part of the driver of the lorry insured with the appellant. The Tribunal erred in holding that the deceased in M.C.O.P.No.26 of 2003 was working as a mason and the deceased in M.C.O.P.No.27 of 2003 was working as a mason assistant and erroneously fixed excessive monthly income and awarded compensation under different heads which are excessive and prayed for setting aside the award of the Tribunal.

6.Heard the learned counsel appearing for the appellant-Insurance Company and perused the materials available on records.

7.From the materials on record, it is seen that the respondents 1 to 3 have examined P.W.2/eye-witness and proved that the accident occurred only due to rash and negligent driving by the driver of the lorry insured with the appellant. The appellant in the counter statement contended that the accident occurred when both the deceased suddenly crossed the road. On the other hand, during cross-examination of P.W.2, a suggestion was put to P.W.2 that both the deceased were sleeping on the road and due to that accident occurred which was denied by P.W.2. The appellant has not let in any evidence to disprove the contentions of the respondents 1 to 3. The Tribunal considering the above facts, has held that accident occurred due to rash and negligent driving by the driver of the lorry and considering the contention of the respondents 1 to 3 about the nature of work of the deceased and age, awarded compensation under different heads which are not excessive. There is no error in the said award warranting interference by this Court.

8. In the result, both the appeals are dismissed and the sum of Rs.3,35,000/- and Rs.3,47,000/- granted by the Tribunal along with interest and costs are confirmed. The appellant-Insurance Company as well as the 4th respondent are jointly and severally directed to deposit the award amount along with interest and costs, 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.Nos.26 & 27 of 2003 respectively. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw their shares of the award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Principal District Judge,
(Motor Accident Claims Tribunal), Cuddalore.
2. The Record Keeper,
V.R. Section,
High Court,
Chennai.

सत्यमेव जयते

+1cc to M/s.M.Rajasekhar, Advocate Sr.19616

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