

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.02.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2135 of 2018

and

C.M.P.Nos.16697 & 21920 of 2018

Branch Manager,
United India Insurance Co. Ltd.,
61/2694, Annam Arcot, 1st Floor,
South Main Road,
Thanjavur-613 009.

...Appellant/2nd Respondent

Vs

1.Elanjiam

2.Ramalingam

..Respondents 1 & 2/Claimants 1 & 2

3.Jambulingam

..3rd Respondent/1st Respondent

4.The Chairman,
Tamil Nadu Electricity Board,
Chennai.

..4th Respondent/3rd Respondent

5.The Supervisor,
Tamil Nadu Electricity Board,
North Madevi Road, Perambalur.

..5th Respondent/4th Respondent

6.The Executive Engineer,
Tamil Nadu Electricity Board,
Raghavan Complex, Vellazha Street,
Ariyalur Taluk.

..6th Respondent/5th Respondent

7.Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Thirumazhapadi,
Ariyalur Taluk.

...7th Respondent/6th Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 07.12.2013 made in M.C.O.P.No.17 of 2010, on the file of Motor Accidents Claims Tribunal, Sub Court, Ariyalur.

For Appellant : Mr.S.Arun Kumar

For RR1 & 2 : Mr.C.Siva Kumar

For RR4 to R7 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 07.12.2013 made in M.C.O.P.No.17 of 2010, on the file of Motor Accidents Claims Tribunal, Sub Court, Ariyalur.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.17 of 2010, on the file of Motor Accidents Claims Tribunal, Sub Court, Ariyalur. The respondents 1 and 2 filed the above claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one Murugavel, who died in the accident that took place on 31.01.2009. The Tribunal considering the pleadings, oral and documentary evidence, held that accident occurred due to rash and negligent driving by the driver of the tractor belonging to the 3rd respondent and directed the appellant-Insurance Company to pay a sum of Rs.6,57,000/- as compensation to the respondents 1 and 2. Challenging the said award 07.12.2013 made in M.C.O.P.No.17 of 2010 the appellant-Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant contended that the Tribunal erred in directing the appellant to pay the compensation when the 3rd respondent-owner of the tractor violated the policy condition by letting out tractor for commercial use. The Tribunal failed to note that at the time of accident two trailer was attached with the tractor which are not insured with the appellant. In the Tractor, no person is permitted to travel. The deceased was not an employee of the owner of the tractor and the accident occurred only due to the over loading of the goods. Due to willful breach of terms of contract by 3rd respondent, the appellant is not liable to pay the compensation. The accident occurred only due to negligence on the part of the respondents 4 to 7 in not properly maintaining the high tension wire. A sum of Rs.4,500/- fixed by the Tribunal as notional income of the deceased is excessive and the Tribunal ought to have deducted 50% towards personal expenses and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents 1 and 2 contended that the respondents 1 and 2 examined P.W.2-eye witness who deposed that the accident occurred only due to rash and negligent driving by the driver of

the tractor belonging to the 3rd respondent. The F.I.R was lodged only against the driver of the tractor. R.W.2-Police who investigated the complaint has deposed that the F.I.R and charge sheet were filed only against the driver of the tractor. The Tribunal considering the above facts, has held that the accident occurred only due to rash and negligent driving by the driver of the tractor and the amounts awarded by the Tribunal are not excessive and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellant as well as the respondents 1 and 2 and perused the materials available on record.

6. From the materials on record, it is seen that the accident occurred when the bundle of sugarcane transported in Trailer came into contact with High Tension electric wire. P.W.2-eye witness deposed to that effect. As per the evidence of R.W.2, the F.I.R was lodged against the driver of the Tractor and the charge sheet also was laid against him. The appellant or 3rd respondent did not examine the driver of the tractor or any eye witness to disprove the evidence of P.W.2, R.W.2 and contents in the F.I.R. The contention of the learned counsel appearing for the appellant that the Trailer was not insured with the appellant and therefore the appellant is not liable to pay compensation is not tenable. The Trailer is used by attaching the same to the Tractor for transporting the goods and it is a goods vehicle. The Tribunal considering the judgment relied on by the parties held that the appellant is liable to pay compensation on behalf of the 3rd respondent.

7. As far as the quantum of compensation is concerned, the respondents 1 and 2 contended that the deceased was working as loadman in sugarcane field for loading and transporting the sugarcane and was earning a sum of Rs.4,500/- per month. No contra evidence was let in by the appellant or other respondents to disprove the evidence of respondents 1 and 2. The Tribunal has not awarded any enhancement towards future prospects. The amount awarded by the Tribunal under different heads are meagre. In view of the same, the deduction of 1/3rd instead of 50% towards personal expenses of the deceased from the income is confirmed.

8. In the result, the Civil Miscellaneous Appeal is dismissed and award of the Tribunal is confirmed. The appellant-Insurance Company is directed to deposit entire amount awarded by the Tribunal along with interest and cost, less the amount, already deposited if any, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit the respondents 1 and 2 are permitted to withdraw the entire amount awarded by the Tribunal on the basis of the apportionment fixed

by the Tribunal along with proportionate interest and cost, less the amount if any, already withdrawn. No costs. Consequently, the Civil Miscellaneous Petition is closed.

rst/gbi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

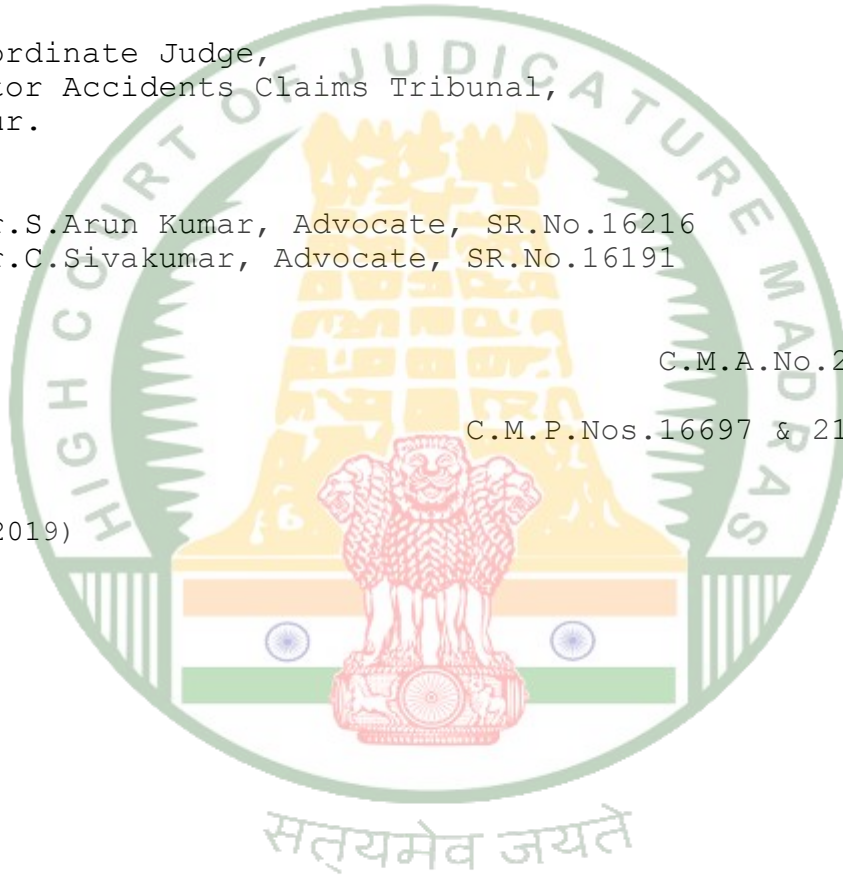
1.The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Ariyalur.

+1cc to Mr.S.Arun Kumar, Advocate, SR.No.16216

+1cc to Mr.C.Sivakumar, Advocate, SR.No.16191

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C.M.P.Nos.16697 & 21920 of 2018

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