

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.2593 of 2018
and
C.M.P.No.19633 of 2018

United India Insurance Co. Ltd,
Greams Road,
Chennai - 34.

... Appellant/2nd Respondent

vs.

1.S.Parameshwari
2.Minor S.Vinothkumar
3.Minor S.Rekha
(Minor respondents 2 and
3 represented by their
mother and next friend
S.Parameshwari)
4.M/s.Valsri Rangarajan Sakuntala
Hightech Eng. College.

...Respondents/Petitioners/ 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 02.03.2018 made in MCOP.No.390 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun kumar

For Respondents 1 to 3: Mr.K.Varadha Kamaraj

JUDGMENT

[Judgment of the Court was made by ABDUL QUDDHOSE, J.]

This appeal has been filed by the insurance company challenging the award dated 02.03.2018 passed by the Motor Accident Claims Tribunal, Court of Small Causes, Chennai in MCOP.No.390 of 2015.

Brief facts leading to the filing of the instant appeal:

2. A person by name Sastidharan died as a result of an accident caused by a Tipper lorry bearing registration No.TN20-AJ-3189 owned by the fourth respondent and insured with the Appellant. The accident happened while the deceased was riding his motor cycle bearing registration No.TN22-CM-3253 from Veerapuram to Madipakkam on proceeding along Avadiveerapuram road at Kannadapalayam Vellanoor opposite to Sai Traders from North to South Direction, at that time, the Tripper lorry bearing registration No.TN20-AJ-3189 came in the opposite direction and collided with the two wheeler which resulted in the death of Sastidharan.

3. The dependents of the deceased who are his wife and two children preferred a claim before the Motor Accident Claims Tribunal in MCOP.No.390 of 2015 against the fourth respondent as well as the Appellant seeking a compensation of Rs.60,00,000/- for the death of Sastidharan.

4. By an award dated 02.03.2018 passed in MCOP.No.390 of 2015 directed the Appellant Insurance Company to pay the claimants a sum of Rs.23,71,660/- as compensation together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation. Out of the total compensation of Rs.23,71,660/-, the Tribunal determined that a sum of Rs.11,71,660/- is payable to the first respondent and a sum of Rs.6,00,000/- is payable to the second and third respondents separately.

5. Aggrieved by the award dated 02.03.2018 passed in MCOP.No.390 of 2015 by the Motor Accident claims Tribunal, the insurance company has preferred this appeal.

6. Heard Mr.S.Arunkumar, learned counsel appearing for the Appellant-Insurance company and Mr.K.Varadhakamaraj, learned counsel appearing for the respondents 1 to 3.

Discussion:

7. The Appellant insurance company has challenged the impugned award only on the ground that the Tribunal has erroneously come to the conclusion that the driver of the insured vehicle was responsible for the accident. According to them, the accident happened only due to the entire fault of the deceased as he came in the wrong side and he lost the control of his motor cycle due to his rash and negligent driving and he crossed the road and dashed against the insured vehicle (Tipper lorry). According to the Appellant, the Tribunal ought to have followed the Judgment of the Hon'ble Supreme Court reported in 1996 ACJ 555 and not awarded more than Rs.50,000/- under "no

fault liability" compensation. It is the further contention of the Appellant that the Tribunal ought to have considered the sketch properly and inferred that the deceased has suddenly crossed the lane in his motor cycle and hit against the lorry (insured vehicle).

8. This Court has perused and examined the impugned award as well as the materials and evidence available on record.

9. Before the Tribunal, the claimants have produced 13 documents which were marked as Ex.P1 to P13 and three witnesses were examined on his side viz., PW1- the wife of the deceased who is the first respondent herein, PW2 - an eye-witness to the accident and PW3 - Official of Apex Logistics in which the deceased was working at the time of the accident. On the side of the fourth respondent as well as the Appellant, three documents were produced which were marked as Ex.R1 to R3 and a witness was examined viz., RW1- driver of the Tipper lorry.

10. FIR was registered only against the driver of the insured vehicle (Tipper lorry). PW2, the brother of the deceased who was an eye-witness to the accident has deposed that only due to the rash and negligent driving by the driver of the Tipper lorry (insured vehicle), the accident had happened which resulted in the death of Sastidharan. However, it is the case of the driver of the Tipper lorry (insured vehicle) who was examined as RW1 that only due to the rash and negligent driving by the deceased, the accident had happened. No independent witness has been examined by the Appellant insurance company before the Tribunal. It is settled principle of law that the liability in a motor accident case is determined by preponderance of probabilities. In the case on hand, the claimants have examined the eye-witness (PW2), though the said eye-witness may be the own brother of the deceased.

11. It is seen from the sketch (Ex.R2), the Tipper lorry (insured vehicle) was coming in the opposite direction to that of the motor cycle. The width of the road is only 30 feet. Being a 30 feet road and not a highway, the drivers of both the vehicles ought to have been cautious and should not have oversped.

12. The statements of the witness on the side of the claimants and the witness RW1 on the side of the Appellant insurance company contradicts each other. However, considering the fact that an independent eye-witness has been examined on the side of the claimant viz., PW2 much weightage will have to be given to the oral evidence of claimants rather than to the evidence of the Appellant / insurance company.

13. However, considering the oral and documentary evidence available on record, it cannot be conclusively found as to who was really at fault. We are of the considered view that the Tribunal ought to have attributed contributory negligence on the deceased also. But instead, the Tribunal has held that the accident had happened only due to the entire fault and negligence of the driver of the Tipper lorry (insured vehicle) which in our considered view is an erroneous finding. Considering the fact that the independent eye-witness has been examined on the side of the claimants, the contributory negligence on the part of the deceased has to be fixed at lesser percentage than that of the driver of the Tipper lorry (insured vehicle). We assess the contributory negligence of the deceased at 10% and that of the Tipper lorry (insured vehicle) at 90%.

14. Insofar as the quantum of compensation assessed by the Tribunal is concerned, the Appellant has not challenged the said findings in this appeal and therefore, the said findings have attained finality.

Conclusion:

15. For the foregoing reasons, the Appeal is partly allowed and the Appellant is directed to deposit 90% of the Award amount i.e., 21,34,494/- after deducting 10 % of the Award amount towards contributory negligence of the deceased, along with interest and costs after deducting the amount, if any already deposited, to the credit of MCOP.No.390 of 2015 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer a sum of Rs.10,34,494/- along with interest accrued to the first respondent through RTGS within a period of four weeks thereafter. Since the second and third respondents are minors, their respective share of award amount i.e., Rs.5,50,000/- each shall be deposited in an interest bearing fixed deposit in any Nationalized bank till they attain majority. However, the accrued interest under the fixed deposit shall be permitted to be withdrawn by the first respondent once in 6 months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Chief Judge,
The Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

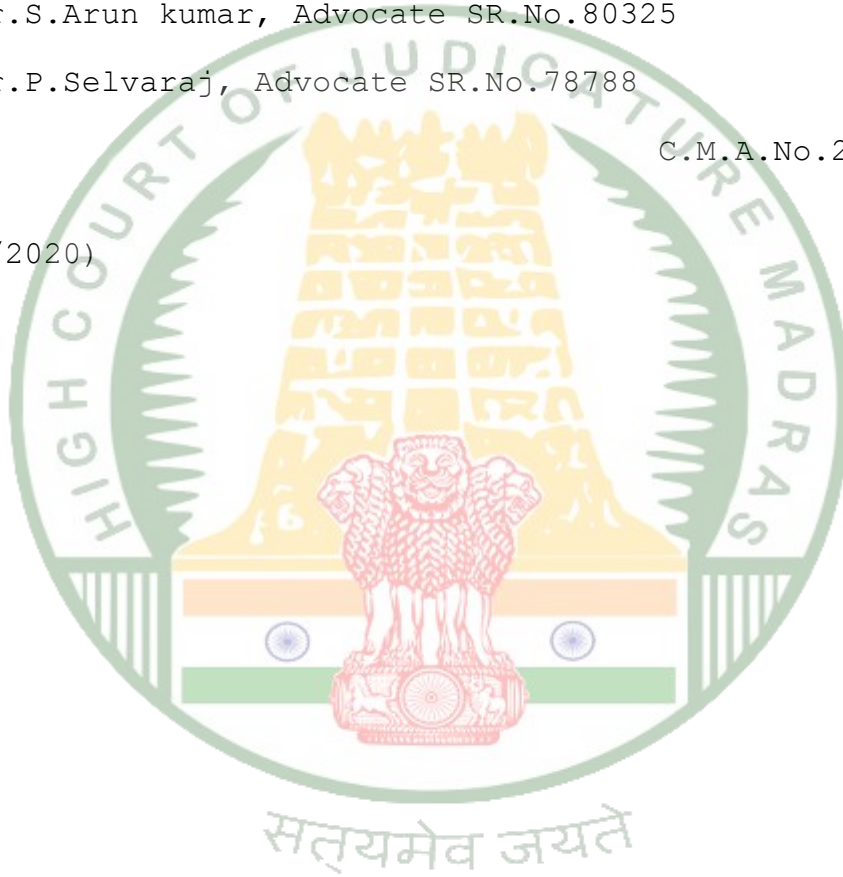
2.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.S.Arun kumar, Advocate SR.No.80325

+1cc to Mr.P.Selvaraj, Advocate SR.No.78788

C.M.A.No.2593 of 2018

KK (CO)
GMY (10/02/2020)



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