

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3045 of 2018
and C.M.P.No.23080 of 2018

Royal Sundaram Alliance Insurance Co. Ltd.,
No.1, Club House Road,
Subramaniam Building,
2nd Floor, Anna Salai,
Chennai.

..Appellant/ 2nd Respondent

Vs.

1.Jaya

2.Minor Chitra

3.Minor Mariselvi

4.Poongodi

(Minor respondents 2 & 3 are
rep.by the Mother & Natural
Guardian, 1st respondent Jaya)

..Respondents 1 to 4/Claimants

5.Soundarajan

..5th Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.08.2017 made in M.C.O.P.No.163 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Kancheepuram District at Chengalpattu.

For Appellant : Mr.M.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 03.08.2017 made in M.C.O.P.No.163 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Kancheepuram District at Chengalpattu.

2.The appellant/Insurance Company is second respondent in M.C.O.P.No.163 of 2014 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Kancheepuram District at Chengalpattu. The respondents 1 to 4/claimants have filed the above claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Murugesan, who died in the accident that took place on 29.04.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by both the deceased as well as the driver of the lorry belonging to the fifth respondent, fixed 25% & 75% contributory negligence on the part of the deceased as well as the driver of the lorry belonging to the fifth respondent, awarded a sum of Rs.12,00,000/- as compensation to the respondents 1 to 4 and directed both the appellant being insurer of the said lorry as well as fifth respondent to pay 75% of the award amount i.e., Rs.9,00,000/- as compensation, jointly and severally to the respondents 1 to 4/claimants.

4.Against the said award dated 03.08.2017 made in M.C.O.P.No.163 of 2014, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on them as well as quantum of compensation awarded by the Tribunal.

5.When the matter is taken up for hearing, the learned counsel appearing for the appellant/Insurance Company contended that though he has questioned the quantum of compensation granted by the Tribunal in the grounds of appeal, now he is challenging only the liability fastened on them. He contended that the Tribunal has erred in fixing 75% of the negligence on the part of the driver of the lorry belonging to the fifth respondent. The Tribunal has failed to see that the accident has occurred only due to rash and negligent driving by the deceased. F.I.R. lodged only against the deceased and R.W.2/Police Officer has spoken about the same and prayed for setting aside the negligence fixed on the part of the driver of the lorry and liability fixed on the appellant/Insurance Company.

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

7.From the materials available on record, it is seen that the driver of the lorry going in front of the vehicle driven by the deceased, suddenly stopped the vehicle and the deceased dashed against the lorry. In the said impact, the deceased sustained head injuries and died in the hospital. The Tribunal considering the fact that the driver of the lorry suddenly

stopped the vehicle, the accident occurred, held that negligence is on the part of the driver of the lorry. At the same time, the Tribunal has held that had the deceased kept reasonable distance between the vehicle, the accident could have been avoided and fixed 25% negligence on the part of the deceased. In view of the above, there is no error in the said reasoning of the Tribunal warranting interference by this Court

8. In the result, this Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. Both the appellant/Insurance Company as well as the fifth respondent are directed to deposit 75% of the amount awarded by the Tribunal along with interest and costs, jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. The appellants 1 and 4 are permitted to withdraw their respective shares as per the ratio of apportionment fixed by the Tribunal along with interest and costs, after adjusting the amount, if any already withdrawn. The shares of the minor appellants 2 and 3 are directed to be deposited in any one of the Nationalised Banks till they attain majority. The 1st appellant, mother of the appellants 2 and 3 is permitted to withdraw the interest amount once in three months for the welfare of the minor appellants 2 and 3. No costs. Consequently, connected Miscellaneous Petition is closed.
kj

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Principal District Judge of
Kancheepuram District,
Chengalpattu.

+1cc to Mr.M.Krishnamoorthy, Advocate, SR.No.598/19

C.M.A.No.3045 of 2018
and

C.M.P.No.23080 of 2018

Kak(08/05/2019)