

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2644 of 2018  
and C.M.P.No.19957 of 2018

Royal Sundaram Alliance Insurance Co. Ltd.,  
8/H1, Omalur Main Road, Four Roads,  
Salem 9. .... Appellant /3<sup>rd</sup> Respondent

Vs.

1.K.Saraswathi  
2.Gunasekar  
3.Saravanan  
4.Renuga ... Respondents 1 to 4/Petitioner  
5.C.Saravanan ...5<sup>th</sup> Respondent/1<sup>st</sup> Respondent

[R2 before the Tribunal died in the course of trial. Hence, R2 before the Tribunal is not arrayed as a party in this appeal]

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 13.04.2018, made in M.C.O.P.No.1246 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Tiruppur.

For Appellant : Mr.S.Manohar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the negligence fixed on the part of the driver of the van and liability fixed on the appellant by the award dated 13.04.2018, made in M.C.O.P.No.1246 of 2009, on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Tiruppur.

2.The appellant-Insurance Company is 2<sup>nd</sup> respondent in M.C.O.P.No.1246 of 2009 on the file of the Principal Sub Court, (Motor Accident Claims Tribunal), Tiruppur. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one Jothikumar, son of 1<sup>st</sup> respondent and brother of the respondents 2 to 4, who died in the accident that took place on 02.08.2009.

3.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 van belonging to the 5<sup>th</sup> respondent and directed the appellant to pay a sum of Rs.6,72,600/- as compensation to the respondents 1 to 4.

4.Challenging the negligence fixed on the part of the driver of the van and liability fixed on the appellant by the award dated 13.04.2018, made in M.C.O.P.No.1246 of 2009, the appellant-Insurance Company has come out with the present appeal.

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

6.The contention of the learned counsel appearing for the appellant-Insurance Company is that only the deceased who drove the vehicle in a rash and negligent manner, while over taking a van, came and dashed against the right side of the van. The Police after investigation, filed final report as FIR lodged against the driver of the van was closed as 'mistake of fact'. The Tribunal erred in rejecting the evidence of driver of the van who was examined as R.W.2 and rough sketch filed by the appellant.

7.From the material on the records, it is seen that all these contentions are contrary to the pleadings and evidence of parties. The respondents 1 to 4 examined P.W.2/Rajendiran, eye-witness who lodged the complaint which was registered against the driver of the van. P.W.2 has deposed the manner of the accident and stated that the accident occurred due to rash and negligent driving by R.W.2, the driver of the van. The Tribunal accepted the evidence of P.W.2 as he is an independent witness as against the evidence of R.W.2, the driver of the van who is an interested witness. In addition to that, the Tribunal has considered the rough sketch marked by the appellant as Ex.R1, even though the Police Officials who prepared the same was not examined. The Tribunal considering the breadth of the road and place of the accident, rejected the contention of the appellant that the deceased went to right side of the road and dashed against the van. The appellant has not examined the driver of the van which the deceased alleged to have overtaken, before dashing against the van or any other independent witness. As far as the final report is concerned, P.W.2/de-facto complainant has stated that no notice was served on him. Before the Tribunal, no particulars were produced as to whether the concerned Judicial Magistrate has accepted the final report or not. The Tribunal has considered all the above facts in proper perspective and held that the driver of the van was rash and negligent in driving and caused the accident and the appellant, as insurer of

the van is liable to pay compensation. There is no error in the finding of the Tribunal, warranting interference by this Court.

8. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.6,72,600/- awarded by the Tribunal as compensation to the respondents 1 to 4/claimants, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, 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.No.1246 of 2009. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa/rst

To

1. The Principal Subordinate Judge,  
(Motor Accident Claims Tribunal),  
Tiruppur.

2. The Officer  
V.R. Section,  
High Court,  
Chennai.

+1cc to Mr.S.Manohar, Advocate Sr.159

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and C.M.P.No.19957 of 2018

rsi[co]  
srg 25/03/2019