

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.11.2020
CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.1223 of 2016
and
C.M.P.No.9246 of 2016

Royal Sundaram Alliance Insurance Company Limited,
No.8-H-1, Mangalam Buildings,
Omalur Main Road,
4 Roads, Salem-7.

...Appellant/2nd Respondent

/versus/

1.Rajendiran
2.Rani
3.Shanthi
4.Selvamani (Minor)
rep.by mother and NF 3rd respondent)

..... 1 to 4 Respondents/Petitioners

5.Periyasamy ...5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.2050 of 2011 dated 11.12.2015 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : M/s.Harini
for Mr.M.B.Gopalan Associates

For Respondents: No appearance

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellant. In spite of several adjournments, there is no representation for the respondents. The matter is decided in the absence of the respondents based on the material records.

2. On 16.08.2011, the deceased Pachiyappan, along with one Kumar and Venkatesan on the pillion was riding his motorcycle bearing registration No.TN 30 AY 8291 on the Mecheri to Kaligoundanoor main Road and dashed against the lorry bearing registration No.TN 24 H 1369. In the accident, Pachiyappan died and the other two pillion riders sustained injury. First Information Report was registered against the deceased

Pachiyappan for his rash and negligent driving.

3. The claim petition filed by the dependants of the deceased Pachiyappan, Motor Accident Claims Tribunal, Salem has awarded a sum of Rs.6,55,000/-. The driver of the lorry and the rider of the two wheeler (the deceased Pachiyappan) holding equally responsible and contributed for the accident. Therefore, the liability apportioned between the rider the tort-feasor and the driver of the lorry and directed the insurer of the lorry to pay the award amount.

4. Aggrieved by the order fixing the liability, the appeal is filed by the Insurer of the lorry on the ground that when the deceased was the tort-feasor and the case was registered against him for rash and negligent driving, the Tribunal has erroneously held that the lorry driver also equally responsible for the accident and has fixed 50% liability upon the Insurance Company.

5. The learned counsel appearing for the appellant/Insurance Company would submit that the First Information Report and the final report which are marked as Ex.B-1 and Ex.X-1 would clearly indicates that the accident occurred due to the rash and negligent driving of the deceased Pachiyappan. While so, the Tribunal over looking the final report as well as the Motor Vehicle Inspector report has held that the lorry driver also equally responsible. It has also failed to take note of the fact that in the claim petitions filed by the pillion riders, the owner of the two wheeler alone was held liable.

6. The perusal of the First Information Report and final report clearly show that the two wheeler dashed against the lorry which was going ahead the two wheeler. The Tribunal pointing out that in Ex.X-2 there is no indication the lorry driver applied break and therefore there is a contributory negligence on the part of the lorry driver also.

7. The ocular evidence of the witness indicate that the lorry driver going ahead of the two wheeler without proper signal stopped the vehicle. Therefore, two wheeler rider dashed on the rear of the lorry and was thrown away. The witnesses are none other than the pillion riders. Their evidence contrary to the FIR, which was given at the earliest point of time.

8. When 3 persons travelling in a two wheeler rash and negligently had dashed against the on going lorry, the lorry driver cannot be attributed for any contributory negligence and rashness. Therefore, the entire negligence is only upon the rider of the two wheeler the deceased Pachiyappan. The claimants are the dependants of the Pachiyappan. They are not entitled for

any compensation being the dependants of the tort-feasor. Therefore the award passed by the Tribunal fixing 50% liability upon the Insurance Company of the lorry is erroneous. The lorry is no way responsible for the accident. Holding the insurer of the lorry to pay the award amount is factually wrong and erroneous. Hence the award is liable to be set aside. Accordingly, the award of the Tribunal is set aside. If any amount deposited by the Insurance Company and if not so far withdrawn, the same may be returned to the Insurance Company.

9. Accordingly, the Civil Miscellaneous Appeal is allowed. Consequently, connected Miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

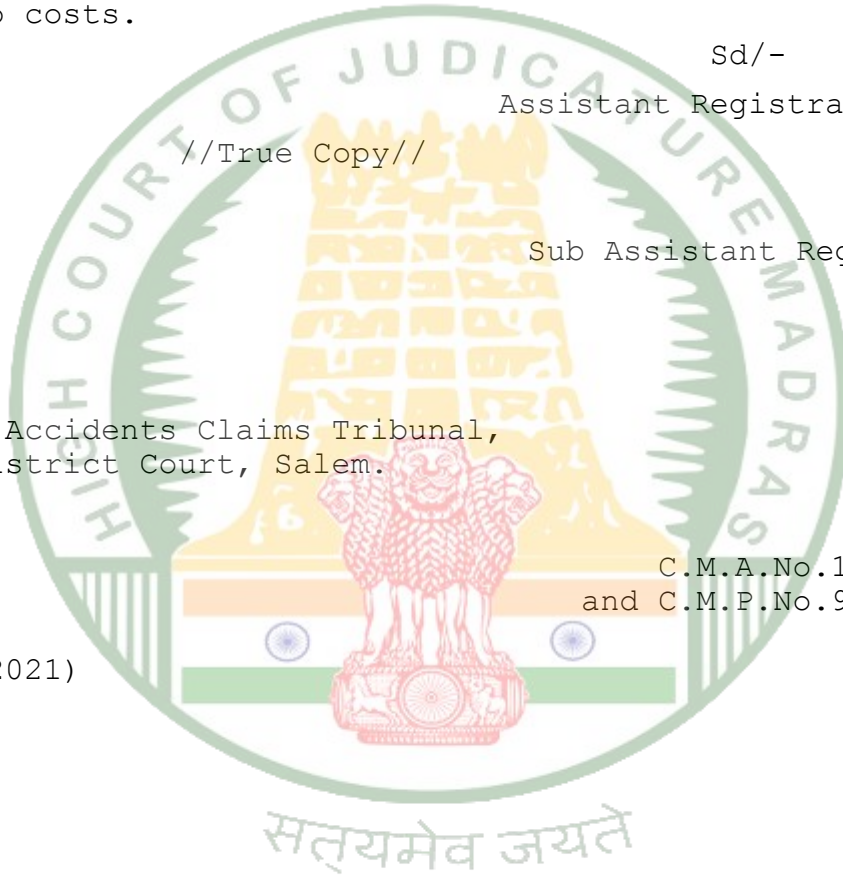
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To

The Motor Accidents Claims Tribunal,
Special District Court, Salem.

C.M.A.No.1223 of 2016
and C.M.P.No.9246 of 2016

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