

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 3392 of 2011
and M.P. No. 1 of 2011

The Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office - VI,
89/1, 2nd Floor, 11th Cross,
Sampiege Road, Malleswaran,
Bangalore 560 003. ... Appellant/2nd Respondent

Vs.

1.Padmavathi
2.Minor Devi
3.Minor Anandhakumar
(Minor respondents 2 and 3 are rep. by
their mother and next friend, 1st respondent)
4.Mary
5.Kengappa ... Respondents
(R5 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 06.09.2010, made in M.C.O.P. No. 156 of 2008, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Ms. I. Malar

For Respondents: Mr. K. Prasanna (For R1 to R4)
for M/s. M. Sriram

R5 : R5-exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 06.09.2010, made in M.C.O.P. No. 156 of 2008, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No. 156 of 2008, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Krishnagiri. The respondents 1 to 4/claimants filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one P. Joseph who died in the accident that took place on 01.06.2007.

3.According to the respondents 1 to 4, on the date of accident viz., 01.06.2007, at 11.15 p.m, when the deceased was driving the T.N.S.E.T.C. Bus bearing Registration No. TN-01-N-6885 on Hosur to Krishnagiri NH Road, near Brindhavan Petrol Bunk - Maruthi Nagar, slowly and cautiously, observing all the rules of the road, at the instance of two passengers to attend nature's call, the deceased driver of the Bus stopped the vehicle in the extreme mud portion of the road with necessary parking lights and got down from his seat and was standing near the Bus. At that time, the Mitsubishi Canter Mini Lorry bearing Registration No. KA-01-A-0379 belonging to the 5th respondent drove the vehicle in a rash and negligent manner and dashed against the deceased driver of the Bus and caused the accident. In the accident, the driver of the Bus succumbed to injuries and the respondents 1 to 4, who are the dependents of the deceased filed the claim petition, claiming compensation against the 5th respondent and appellant, as owner and insurer of the Mini Lorry respectively.

4.The 5th respondent remained exparte before the Tribunal.

5.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 4. According to the appellant, on the date of accident, the driver of the Mini Lorry belonging to the 5th respondent drove the vehicle slowly and cautiously, following all the rules of the road. The deceased driver of the Bus stopped the vehicle in the middle of the road at night time without proper parking lights and got down from the right side door of the Bus in careless and negligent manner, without looking for any vehicle coming from behind. The respondents 1 to 4 have not impleaded the owner of the Bus. The accident has occurred due to negligent act of the deceased driver of the Bus and hence, the appellant is not liable to pay any compensation to the respondents 1 to 4 and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and examined one eye-witness as P.W.2 and marked 7 documents as Exs.A1 to A7. The appellant did not let in any oral and documentary evidence before the Tribunal.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Mini Lorry belonging to the 5th respondent and directed the appellant as well as the 5th respondent to jointly and severally pay a sum of Rs.16,25,245/- as compensation to the respondents 1 to 4.

8.Challenging the portion of the award fixing entire negligence on the part of the Mini Lorry and liability on the appellant and the excessive quantum of compensation granted by the Tribunal, the appellant-Insurance Company has come out with the present appeal.

9.Learned counsel appearing for the appellant-Insurance Company contended that the accident did not occur due to negligence of driver of the Mini Lorry, but the deceased alone contributed negligence to the accident. The Tribunal in the absence of any documentary evidence to show that the entire negligence is on the part of the driver of the Mini Lorry belonging to the 5th respondent, erroneously fixed entire negligence on the part of the driver of the Mini Lorry and liability on the appellant-Insurance Company, instead of fixing contributory negligence on the part of the deceased driver. There are four dependents of the deceased. The Tribunal erred in deducting 1/4th towards personal expenses of the deceased, instead of 1/3rd. The Tribunal erred in adopting higher multiplier in awarding compensation towards loss of dependency and contended that the Tribunal has granted more amounts than what is claimed by the respondents 1 to 4 and prayed for reducing the compensation.

10.The learned counsel appearing for the respondents 1 to 4 made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 4 and perused the materials available on record.

12.From the materials on record, it is seen that it is the contention of the respondents 1 to 4 that on the date of accident, at the instance of two passengers, to attend nature's call, the deceased/driver of the Bus, who was driving the Bus from Hosur to Salem, stopped the Bus and got down from the vehicle and was standing near the Bus. The driver of the Mini Lorry belonging to the 5th respondent drove the vehicle in a rash and negligent manner and dashed against the deceased/driver of the Bus and caused the accident. The respondents 1 to 4 have

examined P.W.2 - eye witness to prove their contention. The appellant has not let in any oral and documentary evidence to disprove the evidence of P.W.2. From Ex.A4-copy of the Motor Vehicle Inspector's report, it is seen that the accident did not occur due to any mechanical defect of the offending vehicle. The Tribunal considering all the materials on record in proper perspective, has rightly fixed entire negligence on the part of the driver of the Mini Lorry belonging to the 5th respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.As far as the quantum of compensation is concerned, the Tribunal considering the fact that there are four dependents of the deceased, rightly deducted 1/4th towards personal expenses of the deceased and granted compensation towards loss of dependency. The Court has power to award just compensation than what is claimed by the claimants. Hence, the contention of the appellant that the Tribunal awarded more compensation than what is claimed by the respondents 1 to 4, has no merits. The Tribunal has considered all the materials on record in proper perspective and granted just compensation, which is not erroneous.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.16,25,245/- along with interest and costs is confirmed. The appellant as well as the 5th respondent are jointly and severally directed to deposit the award amount along with interest and costs, 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. 156 of 2008. On such deposit, the respondents 1 and 4 are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The shares of the minor respondents 2 and 3 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. The 1st respondent, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 2 and 3. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

gsa

To

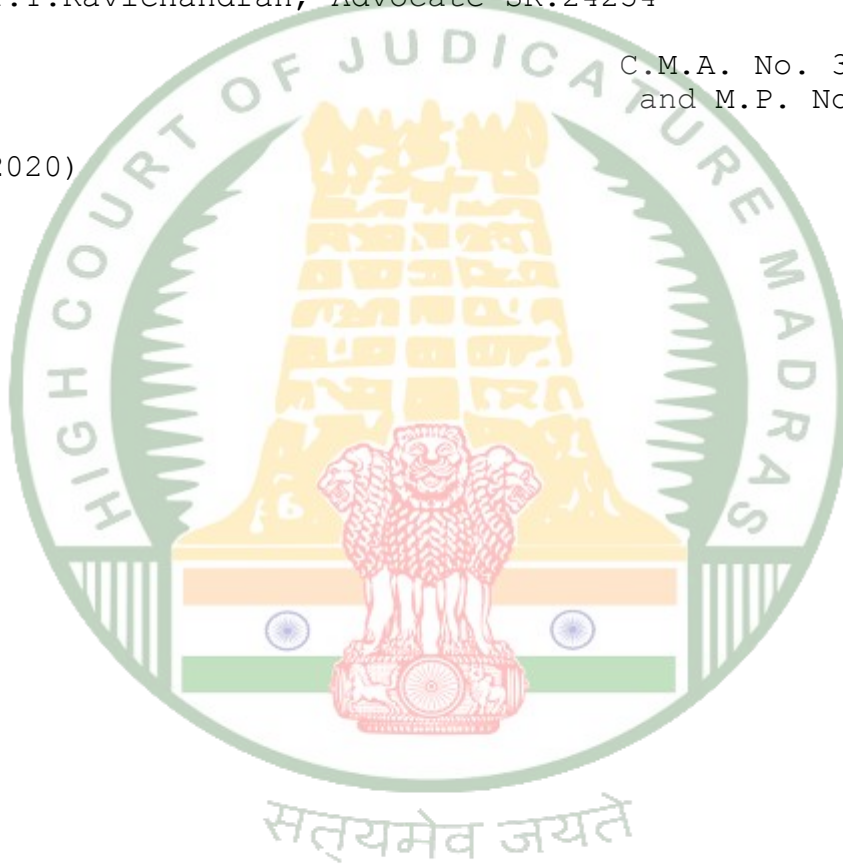
1.The Principal District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

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

+lcc to Mr.T.Ravichandran, Advocate SR.24254

C.M.A. No. 3392 of 2011
and M.P. No. 1 of 2011

GMR (CO)
CB(09/09/2020)



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