

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 248 of 2018
and C.M.P. No. 2790 of 2018

The Oriental Insurance Co. Ltd.,
"Oriental House", II Floor,
New No. 216, Old No. 115,
Prakasam Salai,
Broadway, Chennai 600 108. ... Appellant/2nd Respondent

Vs.

1.A. Janaki
2.A. Megala (minor)
(Rep. by her mother & natural guardian A. Janaki)
3.Bommi ... R1 to R3/Claimants
4.N. Murali ... 4th Respondent/1st
Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 11.04.2017, made in M.C.O.P. No. 2955 of 2014, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. R. Ganesan

For Respondents: Ms. Ramya V. Rao (for R1 to R3)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 11.04.2017, made in M.C.O.P. No. 2955 of 2014, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 2nd respondent in M.C.O.P. No. 2955 of 2014, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one S. Arumugam, who died in the accident that took place on 15.09.2008.

3. According to the respondents 1 to 3, on the date of accident viz., 15.09.2008, when the deceased was driving the Auto Rickshaw bearing Registration No. TN 01 K 1762 at Dr. Rajiv Gandhi Road, the 4th respondent, driver-cum-owner of the Car bearing Registration No. TN 20 U 0527, drove the car in a rash and negligent manner, talking over the phone, endangering public safety and suddenly turned left side and hit the Auto Rickshaw driven by the deceased and caused accident. The said S. Arumugam sustained fatal injuries. The accident has occurred only due to rash and negligent driving by the 4th respondent, driver-cum-owner of the Car. The claimants who are the wife, daughter and mother of the deceased claimed a sum of Rs.20,00,000/- as compensation from the appellant as well as 4th respondent.

4. The 4th 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 3. According to the appellant, the accident has occurred only due to negligence on the part of the deceased and not due to the 4th respondent, driver-cum-owner of the Car. The respondents 1 to 3 have to prove the age, avocation and income of the deceased, to claim compensation. At the time of accident, the 4th respondent did not possess valid driving licence to ply the vehicle and the vehicle was not insured with them. Hence, the appellant is not liable to pay compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, on behalf of the respondents 1 to 3, the 1st respondent examined herself as P.W.1 and one eye-witness was examined as P.W.2 and marked 9 documents as Exs.P1 to P9. The appellant examined SI of Police from the Chindaripet Police Traffic Investigation and Administration Wing, Chennai as R.W.1 and marked one document as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 4th respondent, driver-cum-owner of the Car and directed the appellant to pay a sum of Rs.17,01,000/- as compensation to the respondents 1 to 3.

8. Against the said award dated 11.04.2017, made in M.C.O.P. No. 2955 of 2014, the appellant-Insurance Company has come out with the present appeal.

9. Though the appellant-Insurance Company has raised various grounds with regard to negligence and quantum of compensation granted by the Tribunal, at the time of arguments, the learned counsel appearing for the appellant-Insurance Company submitted that he is restricting his arguments only with regard to

liability. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in rejecting the evidence of R.W.1 and erred in fixing negligence on the part of the 4th respondent, driver-cum-owner of the Car, relying on the evidence of P.W.2. Had the deceased maintained 20 feet safe distance behind the Car which was going ahead of him, the accident would not have occurred. Hence, the accident had occurred only due to negligent driving by the deceased. The Tribunal ought to have rejected the evidence of P.W.2, on the ground that he has neither lodged the FIR nor cited as eye-witness in the criminal case. The Tribunal failed to consider the averments in the claim petition and FIR. The Tribunal erred in rejecting the evidence of R.W.1 and Ex.R1 on erroneous ground that Ex.R1 did not contain seal of the Police Station. The Tribunal ought to have seen that R.W.1 is a Public Officer and Ex.R1 is a public document and accepted the evidence of R.W.1 and Ex.R1, as per the provisions of the Indian Evidence Act, 1872. The liability fixed by the Tribunal is erroneous and prayed for setting aside the same.

10. Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the Tribunal relying on the evidence of P.W.2, fixed negligence on the part of the 4th respondent, driver-cum-owner of the Car. The appellant-Insurance Company has not let in any evidence to prove the negligence on the part of the deceased, while the respondents 1 to 3 have proved the negligence on the part of the 4th respondent by examining P.W.2 - eye witness and have marked FIR which is registered against the driver of the Car as Ex.P2. The appellant-Insurance Company did not let in any contra evidence to disprove the evidence of P.W.2. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11. Heard learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 3 and perused the materials available on record.

12. It is the contention of the respondents 1 to 3 that the 4th respondent, driver-cum-owner of the Car suddenly turned to left and stopped and therefore, the deceased who was a driver of the Auto Rickshaw dashed against the Car and sustained grievous injury and died on the way to the Hospital. To substantiate the said contention, the respondents 1 to 3 examined P.W.2 who deposed that the accident has occurred due to rash and negligent driving by the 4th respondent, driver-cum-owner of the Car. It is the contention of the appellant that the accident had occurred due to negligent driving of the Auto Rickshaw by the deceased. The appellant examined R.W.1, SI of the Police and marked Permanent Accident Register, wherein the FIR is registered

against the deceased Auto Rickshaw driver. The Tribunal rejected Ex.R1, as there was no signature of Official and seal of the Police Station. R.W.1 in the cross-examination admitted that he did not know about the stoppage of the Car by its driver to attend the phone call, as per FIR. R.W.1 is not the eye-witness. The appellant did not examine driver of the Car or any other independent eye-witness. It is well settled that the Tribunal has to fix the negligence based on the evidence let in before it and materials on record available before it. In the present case, P.W.2 is eye-witness who had deposed that accident occurred only due to negligent stoppage of the Car by the 4th respondent, who is the driver-cum-owner. The appellant except examining R.W.1, has not examined the 4th respondent to substantiate their contention that the accident has occurred due to rash and negligent driving of the Auto Rickshaw by the deceased. The Tribunal accepting the evidence of P.W.2, held that the accident has occurred due to negligence on the part of the 4th respondent, driver-cum-owner of the Car. There is no error in the said finding of the Tribunal, warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.17,01,000/- along with interest and costs is confirmed. The appellant is 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. 2955 of 2014. On such deposit, the respondents 1 and 3 are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed above, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor attains majority. The 1st respondent, mother of the minor 2nd respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The II Judge,
Court of Small Causes,
(Motor Accident Claims Tribunal),
Chennai.

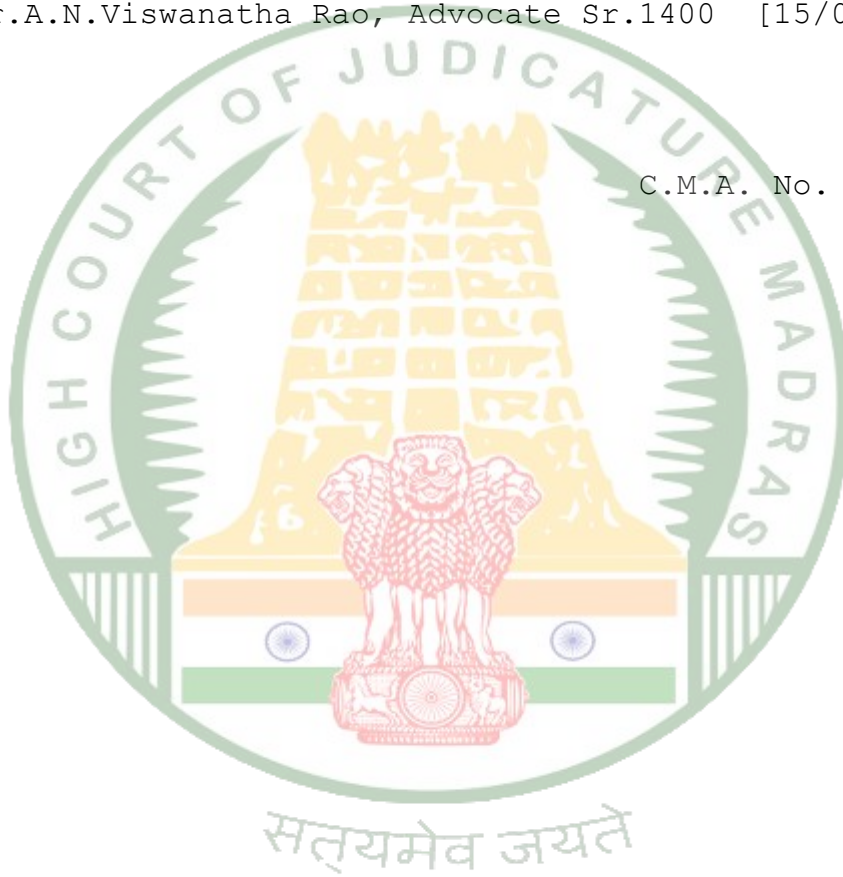
2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Mr.R.Ganesan, Advocate, SR.9690

+1cc to Mr.A.N.Viswanatha Rao, Advocate Sr.1400 [15/09/2020]

sai(co)
krd 22/6

C.M.A. No. 248 of 2018



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