

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2020

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

C.M.A.Nos.1276 & 1277 of 2017
and C.M.P.Nos. 6603 & 6604 of 2017

C.M.A.No.1276 of 2017

National Insurance Company Ltd.,
62, TSR Periya Street,
Kumbakonam. ... Appellant / R-2

Vs

1. Murugayee, W/o. Late. Rasu
2. Thenmozhi, D/o. Late. Rasu
3. Parimala, D/o. Late. Rasu
4. Minor - Iyyppan S/o. Late. Rasu
(4th Respondent Minor rep. by
his guardian, mother first
respondent Murugayee)
... Respondents 1 to 4/1 to 4 Petitioners
5. Alamelu W/o. Late Dhanavel
Amanakkanthondi Village,
Udayarpalayam Taluk,
Perambalur District ... 5th Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act 1988
against the Judgment and Decree dated 19.04.2011 made in MCOP
No. 212 of 2003 on the file of the Motor Accident Claims
Tribunal (Additional District Judge) (Fast Track Court) at
Ariyalur.

C.M.A.No.1277 of 2017

National Insurance Company Ltd.,
No.62, TSR Periya Street,
Kumbakonam. ... Appellant / R-2

1. Murugayee,
W/o. Late. Rasu
residing at
Kathankudikkadu Village,
Ariyalur Taluk.

...Respondent/Petitioner

2. Alamelu W/o. Late Dhanavel
Amanakkanthondi Village,
Udayarpalayam Taluk,
Perambalur District

... 2nd Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 19.04.2011 made in MCOP No. 213 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court) at Ariyalur.

For Appellant : M/s.R.Sree Vidhya
in Both CMAs

For Respondents: Mr.A.Venkatesan

for R1 to R4 - in C.M.A.No.1276/2017

and For R1 - in C.M.A.No.1277/2017

No appearance For - R5

in C.M.A.No.1276/2017

No appearance For - R2

in C.M.A.No.1277/2017

C O M M O N J U D G M E N T

These C.M.A.Nos.1276 and 1277 of 2017 have been filed as against the common award dated 19.04.2011 passed in M.C.O.P.Nos.212 and 213 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court) at Ariyalur by the Appellant / Insurance Company before this Court.

2. The case in brief is as follows:

One Bakkiyaraj, who was studying 7th standard, Son of Murugayee and Late. Rasu, was riding his bicycle from West to East direction on the Trichy - Chidambaram Main Road towards extreme left side, on 19.03.2003. The said Murugayee was sitting on the back of the bicycle. At that time, the lorry bearing Registration No.TN.45.C.7299, belonging to the fifth respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the bicycle and the front wheel of the lorry ran over the head of Bakkiyaraj and his head was crushed, and he died on the spot. Murugayee sustained grievous injuries and severe fractures on the back side spinal-cord,

left hand wrist and also sustained lacerated injuries on the right hand wrist and right shoulder and multiple injuries all over the body. Claiming that the accident had happened only due to the rash and negligent driving of the driver of the said lorry, the legal heirs of Bakkiyaraj have filed M.C.O.P.No.212 of 2003 claiming a sum of Rs.5,00,000/- (Rupees Five Lakhs only) and for the injuries sustained by Murugayee, she filed a claim petition in M.C.O.P.No.213 of 2003 claiming a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as total compensation.

3.The Tribunal has taken both the petitions together and a joint trial was conducted. P.Ws.1 to 4 were examined and Exs.P.1 to P.10 were marked on the side of the claimant and R.Ws.1 to 3 were examined and Ex.R-1 was marked on the side of the Insurer. The Tribunal based on the oral and documentary evidence on record has found that the accident had happened only due to the rash and negligent driving of the driver of the lorry and ultimately fastened the liability on the Insurance Company / Insurer of the lorry and quantified the compensation at Rs.2,25,000/- with interest at the rate of 7.5% per annum from the date of petition, in respect of the fatal case and Rs.1,20,000/- with interest at the rate of 7.5% per annum from the date of petition, in respect of the injury case. Aggrieved against, the insurance company is before this Court by way of these two appeals.

4. Heard both sides

5.The learned counsel for the Appellant / Insurance Company, in both cases, submitted that the Tribunal has failed to note that if the injured had seen the lorry, there is no reason of non-mentioning of the lorry number in the FIR as subsequently the same was interpolated and there was no proof that the lorry insured with the appellant was involved in the accident; since there was no accident, the driver and the owner did not inform or intimate; initially a general counter was filed, but specifically raised a defence of non involvement of the lorry in question in the additional counter statement which the Tribunal failed to appreciate; the Tribunal cannot take pleadings as evidence to hold that the lorry insured with the appellant was involved in the accident, when there was no acceptable evidence other than interested witnesses of Murugayee. She further submitted that the police authorities intimidated the owner and made the vehicle to be produced before the Motor Vehicle's Inspector and no adverse observations were recorded. She further submitted that the Tribunal ought to have dismissed the claim petitions, on this ground.

6.Per contra, the learned counsel appearing for the claimants / respondents, in both the cases, submitted that the Tribunal has taken into consideration the evidence and documents on record in proper perspective and has fastened the liability on the Insurer. He further submitted that the evidence on record clearly establish the fact that the driver of the lorry was negligent in his driving and ample evidence was produced before the Court to prove that the lorry driver was at fault and hence the findings of the Tribunal on quantum requires no interference. He further submitted that the evidence of the Doctor as well as Ex.P.8 Discharge Summary and Ex.P.10 - disability certificate supports the case of the claimant and hence the findings on quantum by the Tribunal does perfectly matches with the II Schedule of the Motor Vehicles Act, evidence of record and probabilities of the case.

7.This Court has considered the said submissions made by the learned counsel for both sides and also perused the materials available on record.

8.Firstly, though in the additional counter affidavit a defence of non-involvement of the lorry in question was taken, it remains to be stated that the earlier version of the injured was that the deceased was also responsible for the accident as the deceased himself dashed against the lorry. When the fact was like that, the Insurer is not permitted to take a defence that the petition mentioned vehicle, was not involved in the accident and it had not proceeded towards the place of accident. If really the lorry is not involved in the accident, the owner of the lorry would not have been asked by the police to send the lorry for Motor Vehicle Inspection. Further, if the lorry is not involved in the accident, the owner of the lorry would not have kept silent and he would have complained before the higher authorities. The owner of the lorry has not taken any steps to prefer complaint before the higher authorities. Also, the defence taken in the counter affidavit by the Insurance Company is not supported by any evidence or documents on record. Hence, the conclusion of the Tribunal that the accident had taken place only due to the rash and negligent driving of the driver of the lorry is well founded.

9.With regard to the quantum of compensation awarded by the Tribunal in these cases, the Tribunal has relied upon the exhibits, evidence of witnesses, treatment records of the injured, percentage of disability assessed by the Doctor, Legal Heirship Certificate, Post Mortem Certificate of the deceased and all other aspects in a proper perspective and has awarded the above compensation amounts under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

10. In the result, the findings on negligence as well as quantum by the Tribunal are confirmed as such and the Civil Miscellaneous Appeals stand dismissed. Consequently the connected Miscellaneous petitions are closed. No costs. The appellant / Insurance Company is directed to deposit the entire compensation amounts with interest and costs, as awarded by the Tribunal, less the amounts if any already deposited within a period of six weeks from the date of receipt of a copy of this judgment.

11. The accident took place in the year 2003. The fourth respondent in CMA No.1276 of 2017 was minor at that time. Now he would have attained majority. Hence, on such deposits being made, all the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

srk

To

1. The Motor Accidents Claims Tribunal
(Additional District Judge)
(Fast Track Court)
Ariyalur.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104. +2 Copies

C.M.A.Nos.1276 & 1277 of 2017
and C.M.P.Nos. 6603 & 6604 of 2017

PP(CO)
GMY(29/04/2021)