



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:	10.11.2021
DELIVERED ON:	01.12.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.19 of 2020
and C.M.P.No.213 of 2020

The Oriental Insurance Company Limited
Third Party Hub
Near Murugan Theatre
Sathuvacherry, Vellore - 9
Vellore District.

...Appellant/2nd Respondent

Vs.

1.S.Priya
2.Minor S.Jagadeesh
3.Minor S.Gowtham
(Minors 2 and 3 are represented by their Mother
and Natural Guardian, 1st respondent-S.Priya)
4.J.Kanchana
5.K.Jagannathan
6.S.Ranjithkumar

...Respondents/Petitioners/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award and decree dated 19.09.2019 passed in M.C.O.P.No.20 of 2017 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge Court, Vellore District, Vellore @ Ranipet).

For Appellant : Mr.R.Sivakumar
For Respondents : Mr.K.V.Ananthakrushnan
RR1 - 5



J U D G M E N T

[Judgment of the Court was delivered by V.SIVAGNANAM, J]

Questioning the award passed by the Motor Accidents Claims Tribunal (II Additional District Judge Court, Vellore District, Vellore @ Ranipet), in M.C.O.P.No.20 of 2017, dated 19.09.2019, the present appeal has been filed by the Insurance Company.

2.It is the case of the claimants that on 24.06.2016, when the deceased was proceeding from Manthangal Mottoor to Muthukadai, ie., from east to west, in the two wheeler bearing Registration No.TN 73 C 8728, a two wheeler bearing Registration No.TN 73 L 2191 came from the north to south direction, hit against the vehicle belongs to the deceased. Due to the accident, the deceased sustained grievous injuries all over the body and and died in the hospital.

3.The first claimant is the wife of the deceased and the claimants 2 and 3 are their sons and the claimants 4 and 5 are the parents. The appellant herein is the insurer of the two wheeler. Alleging that the accident had taken place due to the rash and negligent driving of the rider of the two wheeler bearing Registration No.TN 73 L 2191, the claimants laid a petition, claiming compensation of Rs.30,00,000/-.

4.Resisting the claim petition, the Insurance Company filed their counter disputing the manner of accident, age, avocation and income of the deceased and its liability to pay the compensation.

5.To substantiate the case, on the side of the claimants PWs1 and 2 were examined and Exs.P1 to P15 were marked. On the side of the Insurance Company, RW1 was examined and Ex.R1 was marked.

6.The Tribunal, after considering the oral and documentary evidence held that the accident had occurred due to the negligence of the rider of the two wheeler bearing Registration No.TN 73 L 2191 and awarded a compensation of Rs.23,50,000/- along with the interest at the rate of 7.5% p.a., from the date of claim petition till the date of realization. Since the rider of the two wheeler did not have valid driving licence at the time of the accident, the Tribunal directed the Insurance Company to pay the above compensation amount at the first



Maanthangal Village. Based on the complaint given by the said Sekar, a case has been registered in Cr.No.307 of 2016 under Section 279 and 337 of IPC against the Saravanan. Since, he died, the police personnel dropped the action against him.

WEB COPY

11.The Tribunal relied upon the evidence of R.W.1-Samikannu, who was working as Senior Assistant in the appellant Insurance Company filed Affidavit, in which he had stated that the Sekar, drove the two wheeler bearing Registration No.TN 23 L 2191, when they were nearing Shanmuga Theatre, he suddenly turned his bike towards right, due to which the deceased hit against the two wheeler of Sekar and sustained grievous injuries. Thereby, the Tribunal fixed the liability upon the driver of the 1st respondent vehicle and awarded compensation.

12.The learned counsel for the appellant while arguing the case, placed reliance upon the award dated 18.10.2019 passed in M.C.O.P.No.108 of 2017, wherein in this case the claimant is Suganya, who is the daughter-in-law of Sekar and the Tribunal has awarded a sum of Rs.37,000/- for the very same accident, by fixing negligence on the deceased Saravanan, based on the police complaint-Ex.P.1 and the Charge Sheet-Ex.R.1.

13.In the light of the above submissions made by the learned counsel for the appellant, we do not know, why the learned counsel for the Insurance Company, who appeared before the Tribunal in both the cases, did not disclose about the earlier disposal of the M.C.O.P.No.20 of 2017, dated 19.09.2019. Further, the FIR has been registered only against the deceased-Saravanan. The police personnel also after conducting investigation came to the conclusion that the Saravanan was responsible for the accident and thereafter dropped the action, since he died. No complaint has been made against the rider of the two wheeler-Sekar. R.W.1-Samikannu, deposed and filed a counter stating that the accident had occurred due to the negligence on the part of the Sekar. P.W.2 - Kumaran also deposed the manner of accident, who stood as an eye witness to the alleged accident and also alleged that the accident had occurred due to the negligent driving of the two wheeler rider-Sekar. The Rough Sketch - Ex.P.7 indicates that the accident took place in the centre of the road. Further, the Ex.P.1 also reveals that the deceased also contributed negligence on the alleged accident.

14.In view of the above discussions, this Court fixes the liability on both the two wheeler rider, who drove the two wheeler bearing Registration No.TN 73 C 8728 and the two wheeler



bearing Registration No.TN 73 L 2191 as 50 : 50. Thereby, the deceased in this case also contributed 50% negligence on the alleged accident, which took place on 24.06.2016. Further, the 1st respondent vehicle is insured with the 2nd respondent. Therefore, the 2nd respondent - Insurance Company is liable to indemnify the insured vehicle and liable to pay 50% of the award amount as negligence is fixed upon the 1st respondent's vehicle rider - Sekar. With regard to quantum, we are of the opinion that it is just and reasonable compensation. Since 50% negligence is fixed upon the deceased, the claimants are entitled to get 50% of the award amount alone.

15. i) In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.11,75,000/- with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. Insofar as the 2nd and 3rd claimants / minor children are concerned, their shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalized Bank and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the 1st claimant / mother once in three months. The apportionment of shares as fixed by the Tribunal to the claimants, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

ii) The appellant/Insurance Company is permitted to recover the above compensation amount in accordance with law from the 1st respondent/ owner of the two wheeler Vehicle bearing Registration No.TN 73 L 2191 after making payment to the claimants.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Jer
To

The Motor Accidents Claims Tribunal
(II Additional District Judge Court,
Vellore District, Vellore @ Ranipet).



Copy to

WEB COPY

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

+1cc to M/s.K.V.Ananthakrishnan, Advocate Sr.62417

+1cc to M/s.R.Sivakumar, Advocate Sr.62520

C.M.A. No.19 of 2020
and C.M.P.No.213 of 2020

vsn II[co]
srg 05/01/2022