



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.2.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.572 of 2012
M.P.No.1 of 2012

The Divisional Manager
New India Assurance Co. Ltd.,
Tiruvannamalai

...Appellant/2nd Respondent

..Vs..

1. Ettiammal
2. Vijayanirmala ...Respondents 1 & 2/Petitioners
3. K.Muniappan ... Respondent-3/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 8.9.2011 made in M.C.O.P.No.357 of 2006 on the file of Additional Subordinate Judge (Motor Accidents Claims Tribunal) Tindivanam.

For Appellant : Mr.K.Vinoth for
Elveera Ravindran

For Respondent No.1 & 2 : Mr.R.Thangavel

For Respondent No.3 : Given up

JUDGMENT

Brief facts of the case is as follows:

On 16.03.2006 at about 9.30 p.m., when the deceased Thangamani raiding a two wheeler bearing registration No.TN-PY-01-C 9880 along with one Kalaimani who was at pillion proceeding towards Tindivanam from Pondicherry, a lorry bearing registration No.T.N.02 D 0244 belonging to the first respondent was parked on the middle of the road without any parking lights in a dark place without any indication in a careless manner, the deceased who drove the two wheeler was not in a position to notice the lorry parked in the road, hit the lorry, thereby caused accident, resulting in Thangamani died on the spot and



the pillion rider who sustained grievous injuries was admitted in JIPMER hospital for treatment. The legal heirs of the deceased filed a claim petition before the tribunal.

2. The respondent No.3 herein remained ex parte before the tribunal. On the side of the claimants, P.W.1 & 2 were examined and Ex.P1 to 5 were marked. On the side of the respondent, no witness was examined or any exhibit marked.

3 Tribunal, based on the oral and documentary evidence adduced by both sides, awarded a sum of Rs.4,40,000/- as compensation to the claimants along with interest at the rate of 7.5% per annum from the date of claim petition till realization. The tribunal while awarding compensation to the claimants, has held that appellant/Insurance Company is liable to pay compensation to the claimants.

4.Challenging the said award, the appellant/Insurance Company has filed the present appeal both against the liability fastened against the Insurance Company as well as the quantum of compensation awarded by the tribunal.

5.Heard the learned counsel appearing for the appellant/Insurance Company, the learned counsel appearing for the respondents/claimants and perused the materials available on record.

6.According to the counsel appearing for the appellant/Insurance Company, the accident was occurred only due to rash and negligent driving on the part of the deceased who driven the motorcycle bearing registration No.TN-PY-01-C 9880. However, tribunal wrongly held that alleged accident was occurred due to rash and negligence on the part of the offending vehicle viz., lorry bearing registration No.T.N.02 D 0244. According to the learned counsel appearing for the appellant/Insurance Company F.I.R. marked before the court below wherein it is specifically stated that lorry was parked on the side of the road and it is also specifically stated that the lorry was parked with parking lights switched on. Therefore, there is no negligence on the part of the lorry.

7. The learned counsel appearing for the appellant / Insurance Company relied on the F.I.R. lodged by the driver of the offending vehicle before the police. P.W.1 and 2 were examined on the side of the respondent/ claimant. P.W.2 eye witness to the accident during chief examination, has specifically stated that the offending vehicle was parked on the side of the road during night hours without any signal and due to the negligence on the part of the driver of the offending vehicle, the accident was occurred. During cross examination by the appellant/Insurance Company, he reaffirmed his statement



that the vehicle was parked without any parking signal and thus, due to negligence on the part of the offending vehicle alone the accident occurred. Therefore, there is no clinching evidence placed by the appellant/Insurance Company to disprove the said negligence on the part of the offending vehicle. Therefore, merely on producing F.I.R. Copy alone, the same was lodged by the driver of the offending vehicle, the appellant/Insurance Company cannot be absolved from liability. Therefore, in the absence of any evidence or materials on the part of the appellant/Insurance Company, the appellant/Insurance Company cannot be absolved from liability. Therefore, there is no warrant to interfere with the award passed by the tribunal.

8 Consequently, the appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.TheAdditional Subordinate Judge
(Motor Accidents Claims Tribunal)
Tindivanam

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

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.11284

+1cc to Mr.R.Thangavel, Advocate, S.R.No.11492

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PVS(CO)
CB(03/09/2021)