



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.02.2021

PRONOUNCED ON : 17 .04.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2162 of 2016

and

C.M.P.No.17490 of 2016

National Insurance Company Limited,
A.P.M.C Yard Mrityun,
Jayanagar, Dharwar-08
Dharward, Karnataka - 580 008.

...Appellant

Vs.

1.Umarani
2.Nithya
3.Minor Hemalatha
(Minor 3rd respondent rep.by her next
friend mother 1st respondent)
4.Shantha
5.Anand Babu
6.Geetha
7.Future General India Insurance
Company Limited,
Salem Branch, 3rd Floor,
No.11-B, Brandhavan Road,
Fairlands, Salem - 18.

...Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.01.2014 and made in MCOP.No.240 of 2011, on the file of the Motor Accident Claims Tribunal, (Principal District Judge) at Dharmapuri.

For Appellants : Ms.R.Sreevidhya

For R1 to R4 : Mr.S.Sivakumar
For Mr.K.Gandhi Kumar

For R5, R6 : No appearance

For R7 : Ms.Harini
For M/s.M.B.Gopalan Associates



JUDGMENT

The Insurance Company is the appellant herein. Challenging the award on the point of negligence and quantum.

WEB COPY

2. The respondents 1 to 4 herein are the legal representatives of deceased Murugan.

3. As per the evidence of P.W.1 and the pleadings in the M.C.O.P on 12.08.2010 around 8.30 P.M, the deceased Murugan was driving in the Lorry bearing No.TN-30-AC-1531, keeping left side of the road, in National Highways-63, Near Avera Bridge. At that time, the Lorry bearing Regn.No. KA-40-4433, belonging to the 1st respondent was driven by its driver, at the opposite direction in a very rash and negligent manner and dashed against the Lorry in which the deceased was proceeding and caused the accident. As a result of the accident, the deceased died on the spot.

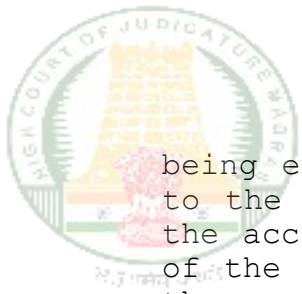
4. The 2nd and 4th respondent before the tribunal filed counter.

5. The trial Court has formulated necessary points for determination and the point for consideration as to whether the accident had happened due to the rash or negligent driving of the Lorry bearing Regn.No.KA-40-4438, by the Driver of the 1st respondent or the Lorry bearing Regn.No.TN-30-AC-1531 by the deceased?

6. In this connection, on behalf of the claim petitioner P.W.1 the cleaner of the lorry having Regn.No.44079 at the place of occurrence was examined. He could deposed that the accident has taken place due to the rash and negligent driving of the driver of the Lorry Regn.No.KA 40 4438 deceased though the vehicle -lorry having Regn.No.TN 30 AC 1531. Before the Tribunal, Ex. P7 FIR was marked. As per F.I.R which is lost by the cleaner of the offending vehicle KA 40 4438 wherein the deceased was shown as the offender and cause for the accident. However none in connection with Ex.P7 F.I.R was examined before the trial Court.

7. The trial Court on consideration both oral and documentary evidence has rendered a finding that the mere registration of the case against the deceased for his alleged negligence or rash driving of the lorry cannot be taken as substantive proof to accept the contention of the 2nd respondent that the deceased was responsible for the accident.

8. Further observed that the evidence of P.W.2 inspires the confidence of the Court and in the absence of any worthwhile



being elicited in the cross-examination the version of P.W.2 as to the manner of the accident have also accepted and held that the accident had happened due to the rash and negligent driving of the lorry bearing Regn.No.KA 40 4438. Accordingly, held that they are responsible for the accident and consequently in view of Ex.P7 Policy of the Insurance for the said offending lorry and the period of insurance being covered on the date of the accident held that both the owner of the lorry as well as its Insurance Company are liable.

9. Such a finding rendered by the tribunal with regard to the manner of the accident does not suffer from any irregularity or illegality warranting interference at this appellate stage. Accordingly, the said finding is hereby confirmed and hence the point raised by the Insurance Company counsel regarding the negligence stands negatived for the reasons discussed supra.

10. On the point of quantum, I find that the same is in accordance with law prevailing at the relevant point of time and hence I find that though in some of the heads of compensation are higher. However in other heads of compensation are being lower and as a whole the compensation so awarded by the tribunal for the death of the person aged about 39 years, a sum of Rs.8988/- at the relevant point of time is just and reasonable and hence, the C.M.A is preferred by the Insurance Company is devoid of merits.

11. Accordingly,

i) This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected C.M.P is closed.

ii) The Insurance Company shall deposit the amount if any (not yet deposited), within a period of eight weeks from the date of receipt of a copy of this judgment.

iii) On such deposit being made, the claimants shall withdraw the same in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvi



To

1. The Motor Accident Claims Tribunal,
Principal district Judge,
Dharmapuri.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.R.Ravichandran, Advocate, Sr.23336

+1cc to M/s.K.Gandhi Kumar, Advocate, Sr.23262

C.M.A.No.2162 of 2016 and
C.M.P.No.17490 of 2016

GMI[co]
NSK 16/09/2021