



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NO.855 OF 2018

AND

C.M.P.NO.7063 OF 2018

United India Insurance Company Limited,
Aurangabad, Maharashtra State.

...Appellant/II Respondent

Vs.

1. Angammal
2. Minor Poovarasan
3. Deivanai
4. Minor Kavitha
5. Minor Vennila

[Minors 2, 4 & 5 are represented
by their NF Angammal]

... Respondents 1 to 5/Petitioners 1 to 5

6. M/s. Trans Global Carriers (P) Limited,
C-16, MIDC, Waluj,
Opp : Universal Luggage, Aurangabad,
Maharashtra State.

... VI Respondent/I Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 13.08.2015 made in M.C.O.P.No.270 of 2014 on the file of the MACT (Spl. District Court) at Dharmapuri (MCOP No.268/2013-Principal District Judge, Dharmapuri).



WEB COPY

For Appellant : Ms.I.Malar

For RR 1 to 5 : Mr.A.Ilaya Perumal

For R6 : Notice sent by Tapal
yet received/unserved.

J U D G M E N T

Challenging the negligence and liability fixed by the Tribunal, the Appellant/Insurance Company has preferred the present appeal.

2. The deceased Mathesh was riding a two wheeler bearing Registration No.TN-29-AL-1579 on 16.01.2013 around 3.30 p.m. on the Dharmapuri-Salem Highway near Thombarakampatti, Adyar Anandabhavan. At that time, a container lorry bearing Registration No.MH-20-BT-4119, driven by its driver, suddenly stopped the lorry, as a result of which, the rider of the two wheeler dashed on the rear side of the lorry, resulting in the accident that had occurred on the Highways. Due to the said accident, the said Mathesh sustained grievous injuries, and was taken to the Hospital and he died after some treatment on the same day. At the time of occurrence, the age of the deceased was 23 years. He was working as J.C.P. Machine Operator and he was earning a sum of Rs.15,000/- per month and had as a good health condition.

3. The contention of the appellant/Insurance Company herein, is that the accident had occurred due to the rash and negligent driving on the part of the rider of the two wheeler. The deceased Mathesh, the rider of the two wheeler, without noticing the parked vehicle, came and hit the parked vehicle and thereby, he sustained grievous injuries and was taken to the Hospital where he died after some treatment. Therefore, the cause of the accident is not the driver of the lorry, but the rider of the two wheeler itself. Under these circumstances, the Tribunal has wrongly fixed the negligence and liability on the driver of the lorry and accordingly, the award passed by the



4. Per contra, the learned counsel appearing for the respondents 1 to 5/Claimants contended that, without any precautionary measures, the driver of the lorry parked the vehicle and therefore, the deceased could not come to the conclusion that whether it was a parked vehicle or it was moving. Further, the driver of the lorry suddenly applied brake and in such a situation, the rider of the two wheeler has no other option, but to move the vehicle. Hence, he sustained grievous injuries and was taken to the hospital for treatment. As the treatment failed, consequently, the deceased passed away. Thus, the negligence and liability was fixed, correctly by the Tribunal, on the part of the driver of the lorry. There is no merit on the submissions made by the learned counsel appearing for the appellant/Insurance Company, accordingly, the present appeal is liable to be dismissed.

6. The accident had occurred on 16.01.2013 around 3.30 p.m. and on behalf of the claimant, one Mr.Parthiban was examined as PW3, Special Sub Inspector of Police, who deposed stating that the lorry was parked on the Highways Road and that is not the parking place of the lorry and the said vehicle was not parked in the place provided for taking rest for the drivers. Further, he stated that, at the time of parking the vehicle, if at all there is any emergency, the driver should have adopted precautionary measures so as to bring into the knowledge of all other moving vehicle drivers about the parked vehicle. Apparently, no such precautionary measures had been taken by the driver of the lorry. Thus accident occurred due to the negligence on the part of the driver of the lorry.

<https://hcservices.ecourts.gov.in/hcservices/>



8. Accordingly, the Civil Miscellaneous Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

msm

To

1. The Special District Judge,
Motor Accidents Claims Tribunal,
Dhamapuri.
2. The Section Officer,
V.R.Section, High Court, Chennai-104.

+1cc to Mr.A.Ilaya Perumal, Advocate, S.R.No.24046

C.M.A.No. 855 of 2018 and
C.M.P.No.7063 of 2018

AD(CO)
RLP(15/09/2021)