



C.M.A.No.4526 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.4526 of 2019
and C.M.P.No.25677 of 2019

M/s.Andhra Cement Carrier
Represented by its Proprietor
Having Office at No.110/E, G.K.Complex
Thiruvallur – 602 001.
Now Office at Sholinghur Road
Kumpinipet
Behind Indian Oil Pump, Arakonam – 631 003.

... Appellant

Vs.

1.The Royal Sundaram Alliance Insurance
Company Limited
Having Office at Subramanian building
2nd floor, No.1, Club House Road
Anna salai, Chennai-600 002.

2.S.Mangala Devi

3.Minor N.S.M.Navarasan
(Minor represented by mother and
natural guardian S.Mangala Devi)



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4.Minor N.S.M.Kavya

(Minor represented by mother and
natural guardian S.Mangala Devi)

N.Manonmani (died)
(Amended as per order in I.A.No.837/2007
dated 06.11.2017)

J.Natarajan (died)
(Amended as per order in I.A.No.247/2017
dated 21.07.2017)

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.11.2017 made in M.C.O.P.No.181 of 2013 on the file of Motor Accident Claims Tribunal, IV Additional District Court, Thiruvallur at Ponneri.

For Appellant : Mr.S.Shanmugasundaram
for Mr.S.Senthilnathan

For R1 : Mr.G.Vasudevan

For R2 to R4 : Mr.K.Hariharan

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant, owner of the vehicle, challenging the portion of the award ordering pay and recovery,



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passed by the Tribunal dated 30.11.2017 made in M.C.O.P.No.181 of 2013 on the file of Motor Accident Claims Tribunal, IV Additional District Court, Thiruvallur at Ponneri.

2.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent/Insurance Company and learned counsel appearing for the respondents 2 to 4 and perused the entire materials on record.

3.The appellant, owner of the vehicle is the 1st respondent in M.C.O.P.No.181 of 2013 on the file of Motor Accident Claims Tribunal, IV Additional District Court, Thiruvallur at Ponneri. The respondents 2 to 4 along with one N.Manonmani and J.Natarajan filed the said claim petition claiming a sum of Rs.80 lakhs as compensation for the death of one Saravanan, who died in the accident that took place on 05.07.2012. Pending claim petition, the said Manonmani and Natarajan, who are parents of the deceased Saravanan died.



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4. According to the respondents 2 to 4, on the date of accident i.e., on 05.07.2012 at 4.40 P.M., while the deceased Saravanan was riding a motorcycle bearing Registration No.TN-20-BA-4509 from Uthukottai to Thiruvallur, Opposite to Meera Theatre, the driver of the lorry bearing Registration No.TN-20-BD-6262 belonging to the appellant, who was coming in the same direction, drove the same in a rash and negligent manner, hit against the motorcycle and caused the accident. In the accident, the said Saravanan died on the way to hospital. Therefore, the respondents 2 to 4 along with parents of the deceased have filed the above claim petition claiming compensation against the appellant, owner of the lorry and 1st respondent/Insurance Company, insurer of the said lorry.

5. The appellant, owner of the lorry remained exparte before the Tribunal.

6. The 1st respondent/Insurance Company insurer of the lorry filed counter statement denying the averments made by the respondents 2 to 4 and stated that since the accident has occurred due to collision of two vehicles,



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contributory negligence has to be fixed on the part of the deceased Saravanan.

The driver of the lorry belonging to the appellant does not possess valid driving license to drive the vehicle at the time of accident. Therefore, the 1st respondent/Insurance Company is not liable to pay any compensation to the respondents 2 to 4. The 1st respondent/Insurance Company has also denied the age, avocation and income of the deceased. In any event, the compensation claimed by the respondents 2 to 4 is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 2nd respondent, wife of the deceased Saravanan examined herself as P.W.1, one Ashogan, eye-witness to the accident was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. The 1st respondent/Insurance Company examined the Assistant Manager (legal) of the Insurance Company as R.W.1 and marked the copies of driving license of the driver of the lorry and Insurance policy of the lorry as Exs.R1 and R2.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by



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the driver of lorry belonging to the appellant and directed the 1st respondent/Insurance Company being the insurer of the said lorry to pay a sum of Rs.22,26,569/- as compensation to the respondents 2 to 4, at the first instance and recover the same from the appellant/owner of the lorry, as the driver of the lorry did not possess driving license at the time of accident.

9.Challenging the portion of award ordering pay and recovery, the appellant/owner of the lorry has come out with the present appeal.

10.It is the case of the learned counsel appearing for the appellant that driver of the lorry had valid driving license till 03.05.2022 and the same is recorded in the Motor Vehicle Inspector's Report. Motor Vehicle Inspector's Report produced by the respondents 2 to 4 was marked as Ex.P8. In column No.7 of Ex.P8, it is recorded as follows:

“HGV – 22.7.2012, D.L.No. 1811/KOR/2002, Expiry Date
: 03.05.2022, Badge: Office: ALA/Ambikapur”

On the other hand, the learned counsel appearing for the 1st respondent/Insurance Company contended that driver of the lorry did not possess driving license at the time of accident and hence, the 1st respondent is



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not liable to pay compensation to the respondents 2 to 4. In support of their contention, they relied on Ex.R1/driving license of the driver of the lorry issued by the Transport Department, Government of Chhattisgarh. The Tribunal considering the contention of the learned counsel appearing for the 1st respondent/Insurance Company and Ex.R1, held that the driver of the lorry did not possess driving license at the time of accident and ordered pay and recovery directing the 1st respondent to pay compensation to the respondents 2 to 4 at the first instance and recover the same from the appellant.

10(i). From Ex.P8/Motor Vehicle Inspector's Report, it is seen that Driving License No.1811/KOR/2002 of the driver of the lorry, expiry date, badge endorsement and Office of issuing authority have been mentioned. The Tribunal has not considered Ex.P8, wherein it was specifically mentioned that the driver of the lorry possessed valid driving license till 03.05.2022 and on the date of accident, the driver of the lorry possessed valid driving license to drive the heavy goods vehicle. In view of the above materials, the portion of the award of the Tribunal ordering pay and recovery directing the 1st



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respondent/Insurance Company to pay compensation to the respondents 2 to 4 at the first instance and recover the same from the appellant alone is liable to be set aside and is hereby set aside. The appellant as well as the 1st respondent are jointly and severally liable to pay the compensation awarded by the Tribunal to the respondents 2 to 4.

11. In the result, the Civil Miscellaneous Appeal is allowed by setting aside the portion of the award directing the appellant to pay compensation to the respondents 2 to 4 at the first instance and recover the same from the 1st respondent/Insurance Company. The compensation of Rs.22,26,569/- awarded by the Tribunal along with interest and cost is confirmed. The learned counsel appearing for the 1st respondent/Insurance Company submitted that the 1st respondent deposited the entire amount awarded by the Tribunal along with interest and costs. Considering the above submissions of the learned counsel appearing for the 1st respondent, the 2nd respondent is permitted to withdraw her respective share of the award amount, determined by the Tribunal, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn.



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The shares of the minor respondents 3 and 4 are directed to be deposited in any one of the Nationalized Banks, till the minors attain majority. The 2nd respondent, mother of the minor respondents 3 and 4, is permitted to withdraw the accrued interest, once in three months for the welfare of the minor respondents 3 and 4. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.S., J)
28.06.2022

Index : Yes / No
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**V.M.VELUMANI,J.
and
S.SOUNTHAR,J.**

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To

1.The IV Additional District Judge
Motor Accident Claims Tribunal
Thiruvallur at Ponneri.

2.The Section Officer
VR Section
High Court
Madras.

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and C.M.P.No.25677 of 2019

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