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C.M.A.No.3067 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3067 of 2011

And

M.P.No.1 of 2011

The Manager
The New India Assurance Co. Ltd.,
45, Moore Street,
Chennai – 1.

... Appellant

Vs.

1.Venkatamma
2.Minor Lavanya
3.Minor Rakesh

(Respondents 2 and 3 minors,
represented by their guardian,
mother and next friend
I respondent, Venkatamma)

4.Gunnaiah
5.Muniyamma

6.The Senior Manager,
Mail Motor Service,
Chennai – 6.

7.R.K.Jegan

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 7th day



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of April, 2011 made in M.C.O.P.No.1168 of 2009, on the file of Court of the Additional District Judge (Fast Track Court No.3), Tiruvallur and be pleased to dismiss the above claim.

For Appellant : Mr.K.Vinod
For Respondents : Mr.N.S.Suganthan for R1 to R3, R5
Mrs.ME.Saraswathy for R6
R4 and R7 – NRN

J U D G M E N T

The third respondent Insurance Company before the learned Additional District Judge (Fast Track Court No.3), Tiruvallur, is the appellant herein. This appeal has been filed seeking to set aside the decree and judgment dated 07.04.2011 passed by the learned Additional District Judge (Fast Track Court No.3), Tiruvallur, in M.C.O.P.No.1168 of 2009.

2.The brief facts of the case is that on 02.06.2009 at about 5.30 hours, the deceased Venkatesan was standing on the left side of the road near Thozhupedu check post to replace the punctured tyres of the lorry along with another cleaner Gopi. At that time the driver of the postal van bearing Registration No.TN-01-AD-4185 drove the vehicle in a rash and negligent manner and dashed against the deceased



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Venkatesan, Gopi and at the backside of the stationed lorry bearing Registration No.AP-26-X-1235, as a result of which, Venkatesan, Gopi, driver of the postal van and another person sitting by the side of the postal van driver died on the spot.

3. Thereafter, the dependants of the deceased Venkatesan/ respondents 1 to 5 filed claim petition before the learned Additional District Judge (Fast Track Court No.3), Tiruvallur, claiming compensation of Rs.6 Lakhs. After adjudication, the learned Additional District Judge (Fast Track Court No.3), Tiruvallur, awarded a sum of Rs.6 Lakhs with interest at the rate of 7.5% from the date of petition till the date of payment and costs and directed the appellant Insurance Company and respondents 6 and 7 are jointly and severally liable to pay the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4. The learned counsel appearing for the appellant submitted that the lorry owned by the seventh respondent was parked on the left side of the road for replacing the punctured tyres. At that time the postal van dashed against the deceased. Hence, the entire liability was on the part of the sixth respondent, however, the learned Additional



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District Judge (Fast Track Court No.3), Tiruvallur, arrived at a conclusion that the appellant Insurance Company and respondents 6 and 7 are jointly and severally liable to pay the compensation, which is not sustainable one.

5.The learned counsel appearing for the sixth respondent submitted that as against the decree and judgment dated 07.04.2011 passed by the learned Additional District Judge (Fast Track Court No.3), Tiruvallur, in M.C.O.P.No.1168 of 2009, the sixth respondent preferred C.M.A.No.82 of 2012 and the same was dismissed on 05.01.2012 and the decree and judgment dated 07.04.2011 was confirmed and hence the impugned judgment and decree warrants no interference.

6.The learned counsel appearing for the respondents 1 to 3 and 5 adopted the arguments advanced by the learned counsel appearing for the sixth respondent.

7.Heard the learned counsel appearing for the appellant, learned counsel appearing for the respondents 1 to 3 and 5 as well as the



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learned counsel appearing for the sixth respondent and perused the materials available on record.

8.Admittedly, on 02.06.2009 at about 5.30 hours, the deceased Venkatesan was standing on the left side of the road near Thozhupedu check post to replace the punctured tyres of the lorry owned by the seventh respondent along with another cleaner Gopi. At that time the driver of the postal van bearing Registration No.TN-01-AD-4185 drove the vehicle in a rash and negligent manner and dashed against the deceased Venkatesan, Gopi and at the backside of the stationed lorry bearing Registration No.AP-26-X-1235, as a result of which, Venkatesan, Gopi, driver of the postal van and another person sitting by the side of the postal van driver died on the spot.

9.In the present case, the driver of the vehicle owned by the sixth respondent came from same direction and dashed against the parked vehicle, however, parking vehicle in the National Highways is contrary to the National Highways Rules since there is a parking bay specifically earmarked for parking the vehicle and the vehicle insured with the appellant parked the vehicle in the National Highways Road



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which is impermissible one. Hence, the learned Additional District Judge (Fast Track Court No.3), Tiruvallur, fastened the liability as against the appellant and respondents 6 and 7, which cannot be interfered with.

10.The civil miscellaneous appeal stands dismissed. The decree and judgment dated 07.04.2011 passed by the learned Additional District Judge (Fast Track Court No.3), Tiruvallur, in M.C.O.P.No.1168 of 2009, is confirmed.

11.The appellant/ Insurance Company is directed to deposit the award amount before the Additional District Court (Fast Track Court No.3), Tiruvallur, within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the claimants/ respondents 1, 4 and 5 are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on making proper and necessary application before the Additional District Court (Fast Track Court No.3), Tiruvallur. The respondents 2 and 3 are permitted to withdraw their respective shares as apportioned by the Tribunal, along with accrued interest and proportionate costs, on



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making proper and necessary application before the Additional District Court (Fast Track Court No.3), Tiruvallur and on production of necessary proof with regard to their majority. If the respondents 2 and 3 are still minors, their shares shall be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until they attain majority and the interest derived from out of the said share of the minor shall be paid to the first respondent/ mother every quarter to be utilized for the welfare of the said minors.

12.The civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

11.10.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Additional District Court (Fast Track Court No.3),
Tiruvallur.

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M.DHANDAPANI,J.
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