



C.M.A.Nos.3007 & 3008 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.03.2023
Pronounced on	11 .04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.**

**C.M.A.Nos.3007 & 3008 of 2021
and C.M.P.Nos.17146 & 17151 of 2021**

C.M.A.No.3007 of 2021

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
No.186/5, 3rd floor,
"Royal Tower" Bus Stand Road,
Meyyanur, Salem-636 004.

...Appellant

Vs.

- 1.G.Anuradha
2. Minor Manideep-
(Minor rep by next friend/
mother G.Anuradha)
3. Saraswathamma



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4.Krishnamurthy

5.C.Raman

6.Mobi P.Mathew, Proprietor
M/s.Premier Traders,
No.34/1700-E, Bank Junction,
Edappally, Cochine-682 024

7.The Branch Manager,
Oriental Insurance Company Limited,
DO Alwaye, Pattamma Buildings,
Pump Junction Railway Station Road,
Alwaye, Cochin, Kerala

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the award dated 26-09-2019 made in M.C.O.P.No. 477 of 2018 on the file of the Motor Accidents Claims Tribunal, (Special District Court for Motor Accident Claims Cases), Krishnagiri.

For Appellant : Mr.G.Vasudevan

For R1 to R4 : Mr.K.Varadhakamaraj



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For R5 : No appearance
For R6 : Mr.N.Selvarajan
For R7 : Mr.J.Vijaya Raghavan

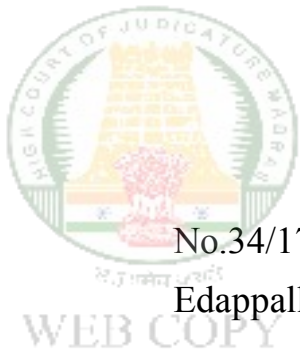
C.M.A.No.3008 of 2021

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
No.186/5, 3rd floor,
"Royal Tower" Bus Stand Road,
Meyyanur, Salem-636 004.

...Appellant

Vs.

1. Santhamma
2. Bhavya Sree
3. Minor.Bhargav Sai
(S/o. Late Krishnaveni)
Minor rep by next friend/
Grand Mother Santhamma)
- 4.C.Raman
- 5.Mobi P.Mathew, Proprietor
M/s.Premier Traders,



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No.34/1700-E, Bank Junction,
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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the award dated 26-09-2019 made in M.C.O.P.No. 478 of 2018 on the file of the Motor Accidents Claims Tribunal, (Special District Court for Motor Accident Claims Cases), Krishnagiri.

For Appellant : Mr.G.Vasudevan

For R2 : Mr.K.Varadhakamaraj

For R5 : Mr.N.Selvarajan

For R6 : Mr.J.Vijaya Raghavan



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COMMON JUDGMENT

(Judgment of the Court was delivered by
K.GOVINDARAJAN THILAKAVADI,J.)

The Insurance Company, who is the 2nd respondent before the Motor Claims Tribunal (Special District Judge) Krishnagiri, in M.C.O.P.Nos.477 of 2018 and 478 of 2018 is the appellant in these Civil Miscellaneous Appeal Nos.3007 and 3008 of 2021.

2. The claimants in M.C.O.P.No.477 of 2018 and in M.C.O.P.No.478 of 2018 would contend that on 27.11.2016 the deceased Muralidar was travelling in a Bolero vehicle bearing Rg.No.TN-24-AB-4318 belonging to the 1st respondent and insured with the 2nd respondent along with his colleagues and they were proceeding to Madanapalli for Revenue Association Elections. At about 8.30 a.m near the fields of one Ramachandrappa, Kaigal village in the Baireddipalli-V.Kotta road, the driver of the Bolero vehicle drove the same in a rash and negligent manner without observing the traffic Rules with high speed and hit against the lorry bearing Registration No.KL-07-CG-9529 belonging to the 3rd respondent and



insured with the 4th respondent which was coming from the side of Baireddipalli.

As a result, the deceased Muralidar and the attender Krishnaveni sustained fatal injury and died on the spot. Based on the above contentions, the claimant in M.C.O.P.No.477 of 2018 claimed a sum of Rs.5 Crores as compensation with 12% interest per annum from the date of petition till realization for the death of the said Muralidaran. The claimants in M.C.O.P.No.478 of 2018 claim a sum of Rs.2 Crores as compensation with 12% interest per annum from the date of petition till realization for the death of the said Krishnaveni.

3.The 1st respondent in the claim petition remained ex-parte. The 2nd respondent/Insurance Company in the counter statement would contend that the Bolero Car bearing Registration No.TN-24-AB-4318 was not insured with the 2nd respondent at the time of the accident and the driver of the 1st respondent was not holding any valid license at the time of the accident. Hence, the 2nd respondent/Insurance Company is not liable to indemnify the 1st respondent. It is further stated that the 1st respondent/driver was not at fault and the alleged accident took place only due to the negligent driving of the 3rd respondent vehicle lorry driver which was proceeding in the opposite direction. Hence, in the absence of



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negligence on the part of the driver of the 1st respondent vehicle the 2nd respondent

is not liable to pay the compensation.

4. The 3rd respondent, owner of the lorry bearing Reg.No. KL-07-CG-9529 in the counter statement, has submitted that the accident occurred only due to the negligent driving of the driver of the 1st respondent vehicle.

5.The 4th respondent/Insurance Company, insurer of the 3rd respondent vehicle, in their counter statement would contend that the accident occurred only due to the negligent act of the 1st respondent driver.

6.Before the Tribunal, on the side of the claimants P.W.1 to P.W.3 were examined and Exs.P.1 to P.29 were marked. On the side of the 4th respondent R.W.1 was examined and Exs.R.1 to R.4 were marked.



7. Based on the evidence adduced on both sides and the arguments advanced on either sides, upon perusing the documents, the Tribunal awarded a sum of Rs.71,30,000/- as compensation to the claimants in M.C.O.P.No477 of 2018 and a sum of Rs.44,42,636/- as compensation to the claimants in M.C.O.P.No.478 of 2018 with proportionate interest and cost.

8. Aggrieved by this, the 2nd respondent in both the claim petitions namely the Royal Sundaram General Insurance Company preferred the present Civil Miscellaneous Appeals, questioning the quantum of compensation as excessive and also on the question of liability. The learned counsel appearing for the appellant in both the appeals would contend that the driver of the lorry is also at fault and therefore, the liability should be apportioned between the two Insurance Companies arrayed as respondents 3 and 4 in the claim petitions, as it is a case of composite negligence.

9. The learned counsel appearing for the respondents would contend that the Tribunal has rightly concluded that the 1st respondent driver is sole cause for the



alleged accident and therefore, the findings of the Tribunal calls for no interference.

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10. This Court heard the arguments advanced in this appeal on either side and paid its anxious considerations to the same.

11. It is in fact not in controversy that on 27.11.2016 at about 8.30 hours when the deceased Muralidar (M.C.O.P.No.477/2018) and the deceased Krishnaveni (M.C.O.P.No.478/2018) were travelling in Bolero Car bearing Reg. No.TN-24-AB-4318 belonging to the 1st respondent and insured with the 2nd respondent met with an accident. It is also not in dispute that the above persons succumbed to the injuries sustained by them. The 1st claimants in the above claim petitions were examined as P.W.1 and P.W.2 respectively. One Balaji Rao was examined as P.W.3 as eyewitness to the alleged accident. P.W.1 to P.W.3 have deposed in line with the facts as narrated in their claim petitions. That apart Ex.P.1- FIR was registered only against the driver of the 1st respondent vehicle. In fact, the driver of the 1st respondent vehicle failed to adduce evidence in respect of the alleged accident. Ex.P.6-Charge Sheet was also laid only against the 1st



respondent driver. Moreover, Ex.R.4 would reveal that in the connected claim petitions in M.C.O.P.Nos.222 of 2017, 226 of 2017 and 369 of 2017, the negligence was fixed only on the part of the 1st respondent driver. Therefore, the Tribunal relying on the evidences of P.W.1 to P.W.3, R.W.1 and Exs.P.1, P.5 to P.7 and Exs.R.1 to R.4 concluded that the rash and negligent driving of the Bolero car belonging to the 1st respondent by its driver was the sole cause of the accident and that the 1st and 2nd respondents as owner and insurer of the offending vehicle were jointly and severally liable to pay the compensation. The above findings of the Tribunal is based on the evidence on record. There is nothing on record to show that the 3rd respondent vehicle driver was at fault for the accident. The owner of the 1st respondent vehicle neither preferred any complaint against the lorry driver nor appeared before the Tribunal to exonerate himself from the liability. The Tribunal has properly appreciated the evidence in this respect and has come to correct conclusion that the rash and negligent driving of the Bolera car belonging to the 1st respondent was the cause of accident and that the 1st and 2nd respondents, in their capacity as owner and insurer of the said vehicle, were liable to pay compensation to the claimants. Under these circumstances, the finding of the Tribunal regarding negligence and the liability of the respondents to pay compensation calls for no



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interference and thus, the said finding has got to be confirmed without any impediment whatsoever.

12.In the result, these Civil Miscellaneous Appeals are dismissed and the order passed by the Tribunal in M.C.O.P.Nos.477 of 2018 and 478 of 2018 are confirmed. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents/claimants are permitted to withdraw the award amount along with interest fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J) (K.G.T.,J.)

11.04.2023

vsn

Internet:Yes/No

Index:Yes/No



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D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

vsn

To:-
The Motor Accidents Claims Tribunal,
(Special District Court for Motor Accident Claims Cases), Krishnagiri.

pre delivery common judgment made in
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