



WEB COPY

C.M.A.No.2880 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.2880 of 2023

and

C.M.P.No.27017 of 2023

The Oriental Insurance Company Ltd.,
Third Party Cell, 2nd Floor (HUB)
No.135, Prakasam Salai, Broadway,
Chennai – 600 108.

...Appellant

Vs.

1.S.Sekar

2.S.Manimegalai

3.K.Rangasamy

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order dated 24th day of November, 2022 made in MCOP.No.3259 of 2020, on the file of Motor Accident Claims Tribunal, (Special Sub Court No.2, Motor Accident Claims Petitions), Small Causes Court, Chennai.

For Appellant : Mr.Elveera Antionette Ravindran

For Respondents : Mr.N.Kamaraj for Caveator / R1



WEB COPY



J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The Insurance Company is on appeal aggrieved by the award of a sum of Rs.24,68,800/- as compensation for the death of one Vignesh in a motor accident that occurred on 28.10.2020 at about 4.30 p.m.

2. According to the claimants, the said Vignesh was riding the motorcycle bearing Reg.No.TN-18-BB-6016 from Tambaram to Puzal bypass road and he hit the lorry which was parked on the carriage way near Kallikuppam toll gate. As a result of the impact, the said Vignesh was thrown off the vehicle and he died on the same day at Government Stanley Hospital. Terming the parking of the lorry on the carriage way as negligent act, the claimants sought for compensation from the Insurance Company. The quantum of compensation claimed was sought to be supported by the fact that the deceased was a Mechanical Engineer, working as a Trainee and earning about Rs.20,000/- per month.



WEB COPY

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested and it was over-speeding by the deceased, that was the reason for the accident. It was also contended that there was enough space in the road for the two-wheeler to pass-by, despite the parked vehicle. The age, qualification and income particulars were denied and the claimants were put to strict proof of the same.

4. At trial before the Tribunal, the 1st petitioner Sekar was examined as PW1 and one R.Manikandan and Anbuselvan were examined as PW2 and PW3. Exs.P1 to P35 were marked. The copy of the FIR, Rough sketch and accident register were marked as Exs.P1 to P3. On the side of the Insurance Company one Arumugam the investigator was examined as RW1 and Exs.R1 and R2 were marked.

5. The Tribunal on a consideration of the evidence, particularly the FIR and rough sketch concluded that the parking of the lorry in the no parking area amounted to negligence and hence, the Insurance Company



would be liable to pay the compensation as the Insurer of the lorry. On the question of apportionment of negligence, the Tribunal found that the accident could have been avoided if the two-wheeler rider was a little careful and hence attributed 10% of the negligence to him.

6. On the quantum, based on the salary slips produced as Ex.P30 the Tribunal took the income at Rs.15,635/-, added 40% towards future prospects and deducted 50% towards personal expenses, as the deceased was a bachelor and fixed the loss of dependency at Rs.23,58,720/-. The Tribunal granted a sum of Rs.80,000/- towards loss of consortium, Rs.15,000/- each towards loss of estate and funeral expenses. Thus, the total compensation worked out to Rs.24,68,720/- and the same was rounded off to Rs.24,68,800/-. After deducting 10% towards contributory negligence, the Tribunal fixed the liability of the Insurance Company at Rs.22,21,920/-. The Tribunal also apportioned the compensation between the claimants who are the parents of the deceased at $\frac{2}{3}$ rd for the mother and $\frac{1}{3}$ rd for the father. Aggrieved the Insurance Company is on appeal.



WEB COPY

7. We have heard Mr.Elveera Antionette Ravindran, learned counsel appearing for the appellant.

8. Mr.Elveera Antionette Ravindran, learned counsel appearing for the appellant would point out that the negligence attributed to the deceased at 10% is too low, considering the facts and circumstances of the case. The learned counsel would submit that the road being near to toll gate was very wide and there was enough space for the vehicles to pass-by, despite the parked lorry. Therefore, the Tribunal should have assigned a larger percentage for negligence than 10% which has been fixed.

9. We have examined the FIR, rough sketch and the accident register. No doubt, there was enough space available, we cannot assume that the entire road was vacant at the relevant point of time. It has been repeatedly pointed out that the parking in the carriage way or a four lane road itself is a negligent act and such parking would amount to 100% negligence on the part of the driver of the lorry concerned. The Hon'ble Supreme Court has



held that parking of vehicles on carriage way in such place is a crime and the driver of the lorry should be burdened with 100% negligence. Anyway the Tribunal has taken the negligence at 90%, while apportioning negligence at 10% on the rider of the two-wheeler. We see no reason to interfere with the said finding. On the quantum also we find that the Tribunal applied the correct principles as laid down by the Hon'ble Supreme Court.

10. We do not find any reason to entertain this appeal. The appeal therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (N.S.,J.)
28.11.2023

dsa
Index :No
Internet :Yes
Neutral Citation :No
Speaking order



C.M.A.No.2880 of 2



To

The Motor Accident Claims Tribunal,
Special Sub Court No.2, Motor Accident Claims Petitions,
Small Causes Court, Chennai.



WEB COPY

C.M.A.No.2880 of 2



R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

dsa

C.M.A.No.2880 of 2023

28.11.2023