



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2236 of 2014
and M.P.No.1 of 2014

Royal Sundaram Alliance Insurance Company Ltd.,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai-14.

.. Appellant

Vs.

1. M.Subramani
2. S,Rajakumari
3. S.Prakash
4. S.Punitha
5. D.Nandha Kumar
6. K. Kavitha
7. ICICI Lombard General Insurance Co. Ltd.,
United Arcade, 3rd Floor,
Annamalai Nagar,
Karur Bye Pass Road, Thilai Nagar,
Trichy

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2012 made in MCOP.No.189 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant	:	Mr.E.Rajadurai For M/s.N.Vijayaraghavan
For Respondents	:	Mr. P.Mani RR2 to 4 Mrs.R.Sree vidhya R7 R1 Died, RR5 & 6- Sd- No appearance

**J U D G M E N T**

This appellant/Insurance company has come forward with the present appeal, challenging the judgment and decree dated 31.10.2012 made in MCOP.No.189 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

2. The Brief fact which are necessary for disposal of this appeal are as follows:

The respondents 1 & 2 are the parents and the respondents 3 & 4 are the brother of the deceased Mahendran. The deceased Mahendran was working as a cleaner in lorry bearing Registration No.TN 23 AV 9509 owned by the 5th respondent and insured with the appellant. On 16.08.2009 at about 01.15 hrs, the lorry driver had driven the lorry in a rash and negligent manner and when the lorry came near ootathur cross road, dashed against another lorry, which was parked in the extreme left side of the road, bearing Registration No.TN 48 J 0094 belonging to the 5th respondent and insured with the 6th respondent. Due to the said accident, the driver of the lorry and the deceased Mahendran sustained injuries and sustained grievous injuries. Immediately, Mahendran was taken to the Government Hospital, Perambalur but he died in the hospital. Thereafter, the claimants have has



filed petition under Section 166 M.V.Act, claiming compensation of Rs.15,00,000/- before the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur and the same was taken on file as MCOP. No.189 of 2010.

3. Before the Tribunal, during trial, in order to prove the case, the claimants have examined two witnesses viz., PW1 and PW2 and marked Exs.P1 to P8, On the side of the insurance company, one witness was examined and two documents were marked. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the claim petition and awarded a sum of Rs.7,08,500/- as compensation to the claimants under various heads, aggrieved by the said award dated 31.10.2012, the appellant/insurance company has filed this appeal before this Court.

4. The learned counsel for the appellant/insurance company would submit that the Tribunal erred in fastening the liability on the appellant Insurance Company when the accident was only due to the negligent of the respondents lorry was parked on the middle of the road without following any traffic rules. The Tribunal failed to consider the rough sketch, charge



sheet and evidence of RW1 which clearly substantiates the fact that the accident was due to 3rd respondent lorry being parked middle of the road.

Based on oral and documentary evidence let in by the appellant, the Tribunal ought to have exonerated appellant from any liability but erred in fastening entire liability on them. The learned counsel would further submit that the Tribunal, without considering the fact, awarded high compensation to the claimants, which is unsustainable one and liable to be interfered.

5. The learned counsel for the 7th respondent submitted that though the appellant specifically filed a counter affidavit stating that the 6th respondent's lorry was parked in the middle of the road. Even assuming that the vehicle was parked in the middle of the road, it is the duty of the lorry driver to drive the lorry in a careful manner. However, the 5th respondent driven the lorry in a rash and negligent manner and dashed against the parked vehicle. The Tribunal has properly adjudicated the issue and fixed the compensation against the appellant Insurance company, the same does not require any interference in the hands of this Court.

6. Heard the learned counsel for the appellant/insurance company and



the learned counsel for the respondents and also perused the materials available on record.

7. The facts of the case are not in dispute. Admittedly, the 5th respondent lorry which was insured with the appellant Corporation, dashed against the stationed lorry owned by the 6th respondent, which was insured with the 7th respondent. It is not disputed that the accident had happened in National Highways. Though the claimants and the 5th respondent claimed that the lorry was parked in extreme left of the road. Further, as rightly submitted by the learned counsel for the 7th respondent submitted that when the lorry was travelling in the National Highways, there is a specific bay allotted for parking the vehicles and the said parking bay is mandatory on the National Highways. Without parking lorry in the parking bay, the lorry was parked in left side is wholly illegal. Hence, this Court is inclined to fix some percentage of the negligence on the 7th respondent/insurance company to the claimants.

8. In view of the above, this court directs the 7th respondent to pay 20% of the compensation as awarded by the Tribunal within a period of six



weeks from the date of receipt of a copy of this order. The appellant/insurance company is directed to withdraw the excess amount as already deposited. On such deposit being made, the claimants are permitted to withdraw the award amount with interest on making proper application before the Tribunal.

9. With the above modification, the appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is also closed.

09.10.2023

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Index : Yes

Speaking Order : Yes

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To

The Motor Accidents Claims Tribunal,
Principal District Judge, Perambalur.

M.DHANDAPANI,J.

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