



C.M.A.(MD).No.705 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 27.11.2023	Delivered on: 21.12.2023
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CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**C.M.A.(MD).No.705 of 2019
and
C.M.P.(MD)No.8851 of 2019**

The New India Assurance Company Ltd.,

Rep. by the Regional Manager,

Office at: No.75E/3, II Floor,

Thillai Nagar, Salai Road,

Trichy – 620 018.

... Appellant /2nd Respondent

Vs.

1.Aruna

2.Minor Jordan Fredric

3.Minor Jeiton Fredric

4.Edwina Fride

... Respondents 1 to 4 / Petitioners

5.Vasudevan

... 5th Respondent / 1st Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 22.03.2019, made in M.C.O.P.No.1416 of 2017, on the file of the I Additional District and Sessions Judge, Thanjavur (PCR) cum Special District Judge MCOP Tribunal.



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For Appellant : Mr.M.S.Suresh Kumar
For Respondents : Mr.S.Alagu Sundar for R1 to R3
: Mr.V.Kannan for R4

JUDGMENT

P.B.BALAJI,J.

The Insurance Company, aggrieved by the award in M.C.O.P.No.1416 of 2017, on the file of the Motor Accident Claims Tribunal, Thanjavur, is the appellant before us.

2. The claimants, being the wife, minor children and mother of the deceased, sought for compensation to the tune of Rupees One Crore in respect of the motor accident that resulted in the death of one Jothi Fredric, on 31.07.2017. Their case was that the said Jothi Fredric was travelling in a two wheeler and when he was crossing the bridge, in the middle of the bridge the driver of the offending lorry drove the vehicle in a rash and negligent manner and suddenly stopped the vehicle, without giving any signal and even the back side door of the lorry was not closed.



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3. The claim was resisted by the appellant on the ground that the deceased alone was negligent and if he had been cautious, he could have avoided the accident. It is further stated that the lorry was parked only on the left side of the road and not in the middle of the bridge.

4. Before the Tribunal, the first respondent herein, wife of the deceased examined herself as P.W.1 and one Saravanakumar was examined as P.W.2 and 23 documents were marked as Ex.P1 to Ex.P23, on the side of the claimants. On the side of the respondents, the driver of the lorry was examined as R.W.1 and no documents were marked.

5. The Tribunal, after assessing the evidence adduced by the parties, came to the conclusion that the accident occurred only due to the offending lorry driver being negligent. Insofar as the quantum, the Tribunal awarding compensation under various heads, arrived at a total compensation of Rs.40,07,584/- and directed the sum to be paid, together



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with interest at 7.5% p.a..
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6. Challenging the said award, the appellant / Insurance Company has preferred the Civil Miscellaneous Appeal, stating that the deceased ought to have maintained a minimum distance of 20 Meters, as per Regulation 23 of the Rules of the Road Regulations, 1989 and therefore, he was clearly negligent, which the Tribunal has not taken note of and that the Tribunal has also erred in fixing the notional income at Rs.25,000/- and prayed for the appeal being allowed.

7. We have heard Mr.M.S.Suresh Kumar, learned counsel for the appellant, Mr.S.Alagu Sundar, learned counsel for the respondents 1 to 3 for R1 to R3 and Mr.V.Kannan, learned counsel for the 4th respondent. We have perused the records and also the award of the Tribunal.

8. The main contention of the appellant is that the deceased was travelling in the same direction and it was he who came and dashed against the parked lorry and therefore, the lorry driver cannot be said to be at fault.



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In this regard, reliance is also placed on Regulation 23 of the Rules of the Road Regulations, 1989, which reads as follows:

23. Distance from vehicles in front.-The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop.

9. We have carefully analysed the evidence of R.W.1 - the driver of the offending lorry. In the counter statement of the appellant, it is specifically stated that the lorry was stopped on the extreme left side of the road. However, it is seen from evidence of P.W.2- the occurrence witness as well as the evidence of R.W.1-the driver of the offending lorry that the vehicle was admittedly stopped only on the bridge. Bridges are no parking zones. Therefore, from the act of the driver – R.W.1 stopping the lorry, that too without closing the back side door of the lorry, is clearly in violation of the provisions of the Motor Vehicles Act. P.W.2 has categorically stated that the driver of the offending lorry suddenly stopped the vehicle without any indication or parking lamps being turned on, which resulted in the accident. The evidence of R.W.1 stating that he parked the lorry on the side of the bridge and that he turned on the parking lamps to caution



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vehicles coming from behind is nothing but a self serving statement made by the driver. The appellant / Insurance Company has not filed any sketch to prove their case that the lorry was parked only on the left side corner of the bridge. The Tribunal has rightly analysed the evidence adduced by P.W.2 and R.W.1 and found that the accident occurred only because of the sudden stopping of the lorry in the middle of the bridge, by R.W.1. Insofar as the Regulation 23 of the Rules of the Road Regulations, 1989, though the appellant contended that the deceased ought to have maintained a distance of 20 Meters, on examining the said Regulation which has been extracted hereinabove, the requirement is only to maintain a sufficient distance to avoid collision, in the event of the vehicle in front stopping or slowing down, suddenly. In any event, this Regulation will not apply to the case where the vehicle proceeding in front is parked without any indication whatsoever. We are therefore unable to countenance the contention of the learned counsel for the appellant that in view of Regulation 23, it has to be held that the deceased was negligent and not that the offending lorry vehicle. We therefore confirm the negligence as fixed by the Tribunal, on the offending lorry. In fact, in terms of Regulation 15 (2) of the Rules of the Road Regulations, 1989, the driver



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of the motor vehicle is prohibited from parking a vehicle on a bridge.

Therefore, there is no difficulty whatsoever in holding that the driver of the lorry alone was negligent and not the deceased.

10. Insofar as quantum, the Tribunal fixed the notional income based on the ratio laid down by this Court in ***Hemalatha V. Chandrasekaran*** reported in ***2013-2-TNMAC-509 (DB)***. The Tribunal arrived at a notional income of Rs.25,000/-, for the accident of the year 2017. The award of compensation under other heads, factoring age, number of the dependents, future prospects and conventional heads are all in line with the ratio laid down by the Hon'ble Supreme Court in ***Pranay Sethi's*** case reported in ***2017-ACJ-2700***. We do not find any grounds to interfere with the compensation awarded by the Tribunal.

11. In fine, we do not find any grounds to interfere with the award of the Tribunal. Resultantly, this Civil Miscellaneous Appeal is dismissed and the award dated 22.03.2019 made in M.C.O.P.No.1416 of 2017, on the file of the I Additional District and Sessions Judge, Thanjavur, is hereby confirmed.



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12. The appellant / Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of Six (6) weeks from the date of receipt of a copy of this judgment.

13. On such deposit being made, the respondents 1 & 4 herein/ claimants 1 & 4 are permitted to withdraw their respective award amounts along with interest and costs as apportioned by the Tribunal, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. In respect of the share of minors - respondents 2 & 3, the Tribunal is directed to deposit their share amount in any one of the Nationalised Banks, till they attain majority. Till then, the first respondent - mother of the minors shall be permitted to withdraw the interest accrued thereon, once in three months in order to maintain the minors. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
21.12.2023



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Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

Is

To

- 1.The I Additional District and Sessions Judge,
Thanjavur (PCR) cum Special District Judge MCOP Tribunal,
Thanjavur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI, J

Ls

judgment in
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