



C.M.A.No.966 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED:06.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.966 of 2016

The Divisional Manager,
The New India Assurance Co.Ltd.,
No.1, Officer's Line
C.S.I.Building,
Vellore 632 001.

..Appellant

versus

1.Umarani
2.Rajeswari
3.Sarala
4.Jayakumar
5.M.Sivakumar
6.The Divisional Manager,
The Oriental Insurance Co.Ltd.,
Katpadi Road, Vellore 03.

7.The Managing Director,
M/s.Vijayanand Road Lines Ltd.,
Administrative Office at
Vijay Karnataka Giriraj
AnnexCircuit, House Road,
Hubli, Dharwad District.

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.10.2011 in MCOP No.121 of 2006 on the file of the Motor Accident Claims Tribunal Judge, Subordinate Court, Ranipet.



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For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.M.Sivakumar for R1 to R4

R5-*Ex parte before* the Lower Court

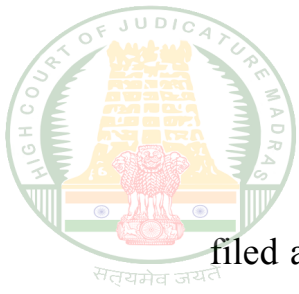
Mrs.R.Sreevidhya for R6

No appearance for R7

JUDGMENT

This appeal has been filed by the Insurance Company challenging the decree and judgment dated 14.10.2011 made in MCOP. No. 121 of 2006 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Ranipet.

2. The 1st respondent is the mother and the respondents 2 and 3 are the sisters and the 4th respondent is the brother of the deceased Renugopal who died on 11.06.2006 at about 04.30 p.m. in the road accident at Vellore to Chittoor road. At the time of the accident, the deceased Renugopal had been riding as a pillion rider in a two wheeler bearing Reg.No.TN 23 AB 4694 which was driven by the 5th respondent. At that time, a lorry bearing Reg.No.KA.25 A 3097 came in the opposite direction in a rash and negligent manner and hit against the two wheeler. As a result of which, the said Renugopal died on the spot and the 5th respondent sustained grievous injuries. Thereby, the appellants/claimants who are the legal heirs of the said Renugopal have



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filed a claim Petition before the Motor Accidents Claims Tribunal under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.6,00,000/- against the owner of the vehicle and its insurer and the same was taken on file in MCOP. No.121 of 2006.

3. Before the Tribunal, during trial, in order to prove the case, on the side of the claimants, two witnesses were examined as PW1 and PW2 and 9 documents viz., Exs.P1 to P9 were marked. On the side of the respondents, two witness were examined as RW1 and RW2 and five documents were marked as Exs.R1 to R5. The Tribunal, considering the oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.4,86,000/- as compensation to the claimants and directed the New India Insurance Company and the Oriental Insurance Company to pay the compensation equally and deposit the award amount of Rs.2,43,000/- each. Aggrieved by the said award, the appellant has filed this appeal before this Court questioning the liability.

4. The learned counsel for the appellant would submit that the tribunal erred in awarding excessive amount of Rs.4,86,000/- as compensation for the death of the deceased Renugopal aged 27 years



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whose mother and non dependent sisters and brother are the claimants.

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Further, the tribunal erred in fixing the monthly income of the deceased excessively at Rs.6,000/- per month without any acceptable evidence regarding the occupation and income of the deceased. The Tribunal has failed to consider that the 1st respondent came in a rash and negligent manner and dashed against the moving lorry. Hence, the Tribunal ought to have fixed entire negligence on the part of the rider of the motorcycle owned by the fifth respondent and duly insured with the sixth respondent in which the deceased was traveling as a pillion rider which was ridden in a rash and negligence manner under the influence of alcohol and dashed against the lorry. The tribunal ought to have fixed negligence on the rider of the motorcycle and the entire liability ought to have been fixed only on the fifth and sixth respondents instead of fixing equal liability on all the respondents before the Tribunal. Accordingly, he prayed for allowing the appeal.

5. Learned counsel for the respondents 1 to 4/claimants would submit that admittedly the deceased Renugopal is a pillion rider and the Trial Court rightly fixed contributory negligence as against the insurer of the lorry and the two wheeler.



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6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. This Court on perusal of the sketch marked before the Trial Court found that the person who prepared the sketch was not examined before the Trial Court. In order to prove the negligence, PW1 examined himself as eye witness and to disprove the same, no eye witnesses were examined by the Insurance Company. As far as quantum of compensation is concerned, the Tribunal has rightly dealt with the issue and awarded compensation for the death of the Renugopal, which is perfectly in order and the same does not warrant any interference by this Court.

8. With the above observation, the appeal is dismissed. No costs. The award passed by the Tribunal is confirmed. The award passed and liability fastened against the appellant and the 6th respondent by the Tribunal is confirmed. Both the appellant/New India Assurance Co.Ltd and the 6th respondent/Oriental Insurance Co.Ltd are directed to deposit the compensation amount with interest at the rate of 7.5% per annum, jointly from the date of petition till the date of realization, after deducting



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the amount if any already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the compensation along with interest and costs as per the apportionments fixed by the tribunal, by filing necessary applications before the Tribunal. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

06.11.2024

(2/2)

msv

To

The Motor Accident Claims Tribunal Judge,
Subordinate Court, Ranipet.



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M.DHANDAPANI.,J.

msv

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