



C.M.A.No.1646 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1646 of 2020

and

C.M.P.No.12113 of 2020

M/s.Iffco-Tokio General,
Insurance Company Limited,
'Mr.Shopping Arcade', II Floor,
No.138/2, Opp.MGM Theatre,
Namakkal – 1.

... Appellant

Vs.

1. Noel Watts
2. Bhagya @ Bhagyammal
3. M.Marimuthu

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Decree and Judgment dated 23rd January, 2020, passed in M.C.O.P.No.101 of 2018, by the Motor Accidents Claims Tribunal (In the Special District Court), at Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.C.Prabakaran for R1 and
R2
Not ready in Notice [R3]



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JUDGMENT

The above appeal is filed by the appellant/insurance company against the Judgment and Decree dated 23.01.2020 passed in M.C.O.P.No.101 of 2018 by the Motor Accidents Claims Tribunal (In the Special District Court), at Krishnagiri.

2. It is the case of the claimant that, on 22.04.2017 when the deceased namely Andrew Watts was driving a car bearing Regn.No.TN 01 AK 3809, at that time, a lorry bearing Regn.No.TN 01 AK 3809, at that time a lorry bearing Regn.No.TN 28 AP 2750 belonging to the third respondent insured with the appellant / insurance company, which was proceeding in the very same direction had applied sudden brake, due to which the deceased dashed the rear side of the lorry resulting in the death of the deceased. Therefore, the claimants / respondents 1 and 2 who are the parents of the deceased have filed a claim petition claiming a sum of Rs.40,00,000/- towards compensation for the death of the deceased.

3. Before the Tribunal, the claimants had examined P.W.1 and



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P.W.2 marked Exhibits P.1 to Ex.P.12. On the side of the appellant / insurance company they examined R.W.1 and R.W.2 and marked Exhibits R1 to R4. After adjudication, the Tribunal awarded a sum of Rs.14,25,800/- as compensation to the claimants / respondents 1 and 2. Challenging the same, the appellant / insurer of the lorry has preferred the present appeal as against the liability fixed as against them.

4. The learned counsel appearing for the appellant / insurance company submitted that, though the said accident had happened solely due to the rash and negligent driving of the deceased, the Tribunal has fastened the entire liability as against the appellant / insurer of the lorry which sounds unreasonable. Moreover, the deceased without following the prescribed distance while driving a vehicle, had dashed the rear side of the lorry while proceeding further and the FIR was also registered as against the deceased, since he died due to the said accident, the same is closed as charge abated. Hence, he prayed to allow this appeal.

5. Per contra the learned counsel for the respondents 1 and 2 / claimants submit that though the FIR has been registered as against the



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deceased, however, the mere fact that the FIR has been lodged against the deceased alone cannot be the basis to attribute rash and negligent driving on the deceased. Admittedly the deceased was riding his car in a moderate speed, however, without lighting any indicator, the driver of the lorry had applied sudden brake, due to which the deceased dashed the rear side of the said lorry, which cannot be said to be negligible on the part of the deceased. In order to prove the negligence on the part of the driver of the lorry and the manner in which the accident had happened, the claimants examined P.W.3, eye witness, however, except the official witness, the appellant / insurance company has not examined any independent eye witness. In the absence of any contra evidence to prove that the said accident had happened solely due to the deceased, the Tribunal on the basis of the deposition of P.W.3, had arrived at a conclusion that the driver of the lorry is negligible and fixed the entire liability as against the appellant / insurer of the lorry which does not warrant any interference.

6. Heard the learned counsel appearing for the appellant and the learned counsel for the respondents 1 and 2 and perused the materials



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available on record.

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7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. Admittedly the accident happened on 22.04.2017. Though the FIR has been registered as against the deceased, the FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and no further. While so, the mere fact that the FIR has been lodged against the deceased alone cannot be the basis to attribute rash and negligent driving of the deceased. In order to prove the manner in which the accident had happened, the claimants have examined an independent eye witness as P.W.3. who categorically deposed before the Tribunal that the accident had occurred solely due to the driver of the lorry. However, in order to disprove the same, no independent eye witness has been examined on behalf of the appellant / insurer of the lorry. In the absence of any documentary evidence on the part of the appellant / insurer of the lorry, the Tribunal has rightly fixed the entire liability as against the appellant / insurance company, which, in the opinion of this Court, is based on sound reasoning and hence, does



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not warrant interference.

8. For the reasons aforesaid, this Appeal stands dismissed, confirming the award passed by the tribunal in MCOP.No.101 of 2018 dated 23.01.2020 and the appellant / insurance company is directed to deposit the compensation of **Rs.14,25,800/-** awarded by the tribunal to the credit of MCOP.No.101 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the respondents 1 and 2 directly to his bank account through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

1. Motor Accidents Claims Tribunal (In the Special District Court), at Krishnagiri.
2. The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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