



C.M.A.No.2146 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2146 of 2023

and

C.M.P.No.20739 of 2023

United India Insurance Company Ltd.,
III Party Claims Cell,
No.73 C, M.T.H. Road,
Ambattur, Chennai – 53

... Appellant

Vs.

1.Geetha, W/o. Saravanan
2.Minor.Nithish, S/o Saravanan,
Represented by his mother and natural
guardian, the 1st respondent
3.Rajamani S/o Muthusamy
4.Krishnamoorthi S/o Rangasamy
5.Sulochana W/o Krishnamoorthi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the set aside the judgment and decree dated 26.08.2022 passed in M.C.O.P.No.653 of 2016 in the Court of the IV Additional District and Sessions Judge, Thiruvallur at Ponneri.



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For Appellant	: Dr.C.Paranthaman
For R1 & R2	: Mr.A.Vimal Raj for Mr.N.R.Anantharamakrishnan
For R3	: No appearance
For R4 & R5	: Mr.R.Thanjan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, questioning the liabilities as well as the quantum of compensation awarded by the Tribunal.

2. Dr.C.Paranthaman, the learned Counsel for the Appellant/Insurance Company would submit that he is restricting his case only in respect of liability alone. He would submit that the deceased driven the two wheeler along with 3 pillion riders. The pillion riders are none other than his wife and 2 children, aged 2 years and 5 years. He would further submit as per FIR which was marked as Ex.P1, since the deceased had driven two wheeler with 3 persons, the incident was occurred. However, the Tribunal has dealt with this aspect elaborately and observed as under:



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“9. Point No.1:-

It is the case of the petitioners is that on 11.07.2016 at about 11.00 A.M., when the deceased was travelling by a two wheeler bearing Registration No.TN-10-As-7581, along with his son namely Harish Karthick, his wife Geetha and another son namely Nithish, on Puzhal to Tambaram bye pass road from North to South and was nearing Kallikuppam Toll Gate, at that time an Ashok Leyland Lorry bearing Registration No.TN-52-H-5344, had been parked in the middle of the road and due to which the deceased went dashed against the said lorry in the front and thereby suffered grievous injuries to the head and died on the spot.

10. The learned Counsel for the petitioner contended that the driver of the Ashok Leyland Multi Axle Lorry bearing Reg.No.TN-52-H-5344 parked the lorry in the middle of the road very dangerously and without any signal and indication in a dangerous manner and where the lorry is not supposed to be stopped due to which the deceased went dashed against the said lorry in the front and caused the accident. It is pertinent to note whether the driver of the motorcycle namely the deceased, came in a rash and negligent manner or the Lorry was parked in the middle of the road without any signal. The PW1 in her chief stated that the road was broad, vehicles came from two side and there is no center-median to separate the road. Further stated that the lorry was parked in the middle of the road and there was no triangle signal kept or any indicate to show that the lorry is stopped. On the other hand the 2nd respondent in his counter stated that the deceased was riding the motor cycle in a rash and negligent manner and dashed against the lorry parked on the side of the road and the allegation that the lorry was parked in the



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middle of the road is not true. The 1st and 2nd respondents have not let in any oral or documentary evidence to controvert or repudiate the contentions raised by the petitioner. In the above circumstances, the petitioners have proved their case with sufficient oral and documentary evidence as per Ex.A-1 to A-14. Therefore, this Court safely come to the conclusion that the accident was happened only on account of the dangerous parking of the 1st respondent lorry in the road without any signal and indication.”

3. Further, the learned Counsel for the appellant/insurance company pleaded before this Court that the rider of the two wheeler also contributed for the accident by riding the two wheeler with three pillion riders. However, he did not take any steps to prove that said aspect and the said aspect was also recorded by the Tribunal in its order.

3.1 Under these circumstances, the Tribunal has come to the conclusion that since the driver of the lorry had parked the vehicle bearing Registration No.TN-52-H-5344 in the middle of the road without any headlight, the rider of the two wheeler was not in a position to know whether the vehicle was parked or moving. Under these circumstances only the accident was occurred and the Tribunal has also rightly come to the conclusion that the accident was occurred



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only due to the negligence on the part of the driver of the lorry who parked the vehicle in the middle of the road without any indication. Due to which the accident had occurred, wherein, the deceased and one child aged about 5 years had passed away on the spot, after suffering severe head injuries. Therefore, I do not find any error in fastening liability on the part of the driver of the lorry by the Tribunal.

4. As far as the quantum of compensation is concerned, at the time of arguments, the learned counsel for the appellant/insurance company has stated that his claim is only against non-fixation of contributory negligence on the part of the deceased for non wearing of helmet. Since this Court stands confirmed the liability as well as the quantum of compensation awarded by the tribunal, this Civil Miscellaneous Appeal is liable to be dismissed.

5. In the result, this civil miscellaneous appeal is dismissed. The Insurance Company is directed to deposit the entire award amount after deducting the amount already deposited, if any, along with 7.5% interest within a period of six weeks from the date of receipt of a copy of this Judgment. Upon



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receipt of the entire amount, the Court below is directed to transfer the entire amount to the bank account of the claimants as well as the father and mother of the deceased bank account by way of RTGS within a period of three weeks thereafter, in the same proportion as ordered by the Tribunal. No costs.

19.01.2024

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

To:

The Motor Accidents Claims Tribunal/
IV Additional & Sessions Judge,
Tiruvallur at Ponneri.



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KRISHNAN RAMASAMY,J.

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