



C.M.A.No.3670 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3670 of 2019

M/s.United India Insurance Co. Ltd.,
Oriental Complex,
27, Arunachala Asari Street,
Salem – 663 001.

.. Appellant

Vs.

1.J.Sangeetha
2.Minor Praveen
3.Minor Maha @ Madhushree
(Minors are represented by their next
friend and mother J.Sangeetha)
4.P.Rajambal
5.C.Perumal
6.M.Vennilamani
7.P.Murugesan
8.ICICI Lombard Insurance,
Zenith House,
Keshavarao Khade Mard,
Mahalaxmi, Mumbai 400 034.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 07.12.2011 made in M.C.O.P.No.897 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge and Special Judge, Salem.



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For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.S.Vinod for R6
Mrs.R.Srividhya for R8
No appearance for R1 to R5
R7- notice returned

J U D G M E N T

The Insurance Company, the appellant herein, has filed this appeal seeking to quash the order dated 07.12.2011 in M.C.O.P. No. 897 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Judge and Special Judge, Salem, questioning the negligence attributed to the driver of the bus and the quantum of compensation.

2. The case of the claimants is that on 10.04.2008, at about 12:50 p.m., when the deceased Jaganathan, aged about 33 years, was driving a Tipper Lorry bearing No. TN-30/AB-9652 belonging to the 7th respondent and insured with the 8th respondent from Pondicherry towards Kelambakkam, near Rajini Thottal on the Vandaloor Road, the gas cylinder lorry belonging to the 6th respondent and insured with the appellant came in a rash and negligent manner and without control hit the deceased thereby resulting in his death. Though he was taken to Vattinadu



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Hospital for treatment, the said Jaganathan succumbed to his injuries.

Under these circumstances, the claim petition was filed by the dependents—his wife, children, and parents—before the Tribunal seeking payment of compensation for the death of Jaganathan.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciating the oral and documentary evidence, concluded that the accident occurred due to the rash and negligent driving of the tipper lorry belonging to the Insurance Company.

4. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.6,53,000/- under various heads, as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of income	6,48,000
2.	Funeral Expenses	5,000
	Total	6,53,000

5. The above compensation was directed to be paid by the



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Insurance Company with interest at the rate of 7.5% per annum.

6. The Insurance Company filed the appeal challenging both the finding of negligence and the quantum of compensation awarded by the Tribunal.

7. The learned counsel for the appellant submitted that the FIR/Ex.P1 was registered based on the statement of Kalaiyarasan, the driver of the gas cylinder lorry. It was stated in the FIR that the accident occurred when the driver of the gas cylinder lorry was driving the vehicle in a rash and negligent manner and collided with the tipper lorry. However, no independent witness was examined to verify the negligence. He further submitted that since the deceased was a tortfeasor, the accident, arising in the course of employment, makes the representatives of the deceased bound to claim compensation under the Workmen's Compensation Act.

8. The learned counsel argued that the Tribunal fixed notional income at Rs.4,500/- per month in the absence of evidence for the deceased monthly income and awarded Rs.6,53,000/-, which is exorbitant.

9. The learned counsel for the claimants submitted that the



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deceased was driving the lorry owned by the 7th respondent and insured with the 8th respondent. Initially, the case was registered against the driver of the gas cylinder lorry. After considering the facts, the Tribunal awarded compensation for the deceased's death, which is justified and does not warrant interference.

10. Heard the learned counsel for the Insurance Company and the learned counsel for the claimants.

11. This Court carefully considered the submissions made on either side and the materials available on record.

12. This Court also carefully reviewed the award passed by the Tribunal.

13. The first ground is regarding the question of negligence raised by the Insurance Company. As rightly submitted by the learned counsel for the claimants, it is stated in the FIR that the accident occurred when the driver of the gas cylinder lorry, who was driving the vehicle in a rash and negligent manner, collided with the tipper lorry. In the present case, to prove the claimants' case, PW2, an eyewitness, was examined. The



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Tribunal, while considering the above evidence, concluded that the Insurance Company ought to have examined independent witnesses. However, the Insurance Company examined only the cleaner of the lorry and not any independent witnesses. Hence, the Tribunal concluded that the accident occurred due to the rash and negligent driving of the gas cylinder lorry driver.

14. It is true that there was no conclusive evidence beyond reasonable doubt to establish that the accident occurred in the manner projected by the driver of the gas cylinder lorry. A driver will always give a version advantageous to him, and the claimants, on the other hand, will provide a version advantageous to them. This is precisely why the Tribunal insisted on an independent witness. Given this, the decision of the Tribunal cannot be held as perverse. Consequently, the finding of the Tribunal fixing negligence on the driver of the gas cylinder lorry is hereby confirmed.

15. Insofar as the compensation is concerned, this Court finds that the quantum fixed by the Tribunal under various heads is reasonable.

16. A notable factor in this case is that the accident occurred in the year 2008, and the deceased was employed as a lorry driver at the time.



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The Tribunal, after considering the circumstances, fixed a sum of Rs.4,500/- as the deceased's notional income, which this Court finds to be appropriate. Consequently, the appeal filed by the appellant challenging the quantum of compensation is devoid of merit and cannot be sustained.

17. In the result, the civil miscellaneous appeal is dismissed. The judgment passed by the Tribunal is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

04.11.2024

msv

Index : Yes

Speaking Order : Yes

To
Motor Accidents Claims Tribunal,
Additional District Judge and Special Judge,
Salem.



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M.DHANDAPANI,J.

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