



C.M.A.(MD).No.583 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 25.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.583 of 2018

and

C.M.P(MD) No.6724 of 2018

M/s. Royal Sundaram Alliance

General Insurance Company Limited,

Chennai – 2,

Represented by its Branch Manager.

... Appellant/2nd Respondent

-vs-

1. Devi

2. Selvaraj

3. Soundaraya

4. Ganapathy

5. Chelliah

... Respondents 1 to 5/
Claimants

6. K.A.Salim

... 6th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the fair and decretal order dated 20.11.2017, made in M.C.O.P.No.50 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukkottai.



WEB COPY



C.M.A.(MD).No.583 of 2018

For Appellant : Mr.M.E.Ilango
For Respondents : Mr.N.Balakrishnan
for R1 to R4
: No appearance – for R6
: R5 - dismissed

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the award passed in M.C.O.P.No.50 of 2015 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukkottai, primarily, on the ground of negligence and quantum.

2. According to the claimants, the deceased was a driver of a National Permit Lorry. While he was driving the vehicle on 02.09.2014 at about 09.15 p.m., the lorry tyre had got burst and he had parked the vehicle on the left side of the road. While they were repairing the said lorry after observing all precautions, the lorry owned by the first respondent and insured with the second respondent was driven in a rash and negligent manner and dashed against the parked lorry, in which, the driver of the parked lorry had sustained grievous injuries and he passed away. According to the claimants, the entire



C.M.A.(MD).No.583 of 2018

negligence is on the part of the lorry owned by the first respondent in the claim petition. Therefore, the claimants have prayed for a sum of Rs.60,00,000/- (Rupees Sixty Lakhs only) towards compensation.

3. The Insurance Company had filed a counter specifically contending that the vehicle was not parked with blinking parking lights and therefore, the negligence is on the part of the driver of the parked lorry and therefore, they are not liable to pay any compensation.

4. The Tribunal, after considering the oral and documentary evidence on either side, had arrived at a finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the first respondent and has proceeded to fix the notional income of the deceased at Rs.12,000/- (Rupees Twelve Thousand only) per month. The Tribunal had ultimately arrived at a compensation of Rs.20,55,000/- (Rupees Twenty Lakhs and Fifty Five Thousand only). Challenging the same, the present appeal has been filed by the Insurance Company.



C.M.A.(MD).No.583 of 2018

WEB COPY

5. According to the learned counsel appearing for the appellant/ Insurance Company, the deceased was the driver of the parked vehicle and he had parked the said vehicle without observing proper precautions. The parking lights were not blinking at the relevant point of time. Therefore, the Tribunal ought to have fixed contributory negligence on the part of the deceased also. He further contended that the Tribunal was not right in fixing a sum of Rs.12,000/- (Rupees Twelve Thousand only) as notional income for the deceased person and there is no proper proof of income on the side of the claimants. Hence, he prayed for allowing this appeal.

6. Per contra, the learned counsel appearing for the claimants had contended that the accident had taken place only due to the rash and negligent driving on the part of the vehicle owned by the first respondent and therefore, the Tribunal was right in mulcting the liability on the Insurance Company. He further contended that the deceased was a professional heavy vehicle driver and therefore, the monthly income fixed by the Tribunal at Rs.12,000/- (Rupees Twelve Thousand only) per month need not be disturbed.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



C.M.A.(MD).No.583 of 2018

10. In view of the above said facts, there are no merits in this appeal.

Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

25.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The Motor Accident Claims Tribunal,
Additional District Court,
Pudukkottai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.583 of 2018

R.VIJAYAKUMAR,J.

ebsi

C.M.A(MD)No.583 of 2018

25.06.2024