IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 447 of 2015
&
M.P. No. 1 of 2015

The Oriental Insurance Co. Ltd.,
Kamatchi Amman Complex,
2nd Floor,
Sri Kamatchi Amman Koil,
Dindigul Road,
Ottan Chattiram Taluk - 624 619. ... Appellant

Vs.

1. Subbulakshmi
2. Raja
3. Saravanan
4. Shriram General Insurance Co. Ltd.,
   ERICCO Industrial Area,
   Sitapura, Jaipur,
   Rajasthan - 302 022.
5. Fulail
6. Kannan ... Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 07.01.2014 passed in M.C.O.P. No. 642 of 2013 by the Motor Accidents Claims Tribunal (II Addl. District Court), Tiruppur.

For Appellant : Mr.N. Vijayaraghavan

For Respondents : Mr.Ma.P. Thangavel for R1
Mr.S. Dakshinamoorthy for R4

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred challenging the fastening of 50% contributory negligence on the driver of the mini lorry, insured with the appellant, parked on the road, which was hit by another mini lorry insured with the 4th respondent herein, driven rashly and negligently, causing the accident on 05.10.2012, leading to the death of the first respondent's son Senthilvel aged about 29 years, a cleaner said to have been earning about Rs.10,000/- per month.

2. Heard the learned counsel for the appellant , the learned counsel for the 4th respondent as well as the learned counsel for the 1st respondent/claimant.

3. Learned counsel for the appellant would submit that the mini lorry bearing Registration No. TN 57 R 4212 insured with the appellant Insurance Company was parked on the road and without noticing the said lorry, another mini lorry bearing Registration No. TN 57 W 9735, driven rashly and negligently, dashed against the parked lorry and caused the accident. However, the Tribunal, without appreciating the filing of FIR against the offending vehicle, namely, the mini lorry bearing Registration No. TN 57 W 9735, insured with the 4th respondent herein, observed that the lorry insured with the appellant was parked without any signal lights, that if the lorry had been parked with proper signal lights, the accident could have been averted and wrongly fixed the negligence at 50:50 on the parked vehicle as well as on the offending vehicle. Therefore, the learned counsel seeks to set aside 50% contributory negligence fixed on the driver of the parked lorry.

4. However, the learned counsel for the 4th respondent would submit that there was no evidence to conclude that the stationary vehicle was parked without proper signal lights. In the absence of any evidence with regard to the said aspect, the Tribunal rightly fixed the liability in the ratio 50:50.

5. Mr.Ma.P. Thangavel, learned counsel for the claimant, would, irrespective of fastening of liability, support the compensation amount alone.

6. It is seen from the records that the mini lorry insured with the appellant was parked on the road and only the vehicle insured with the 4th respondent came from behind and hit the stationed mini lorry insured with the appellant. Ex-P1, FIR has been filed against the driver of the offending vehicle namely, TN 57 W 9735. P.W.2, an

eye witness to the occurrence, has also categorically stated that the accident occurred because of the rash and negligent driving of the mini lorry insured with the 4th respondent. From the above, it is very clear that it is the mini lorry insured with the 4th respondent that was driven rashly and negligently. Therefore, the finding given by the Tribunal that the stationary vehicle, had it been parked with proper signal lights, then the accident could have been averted, is based on surmises and conjectures, in the absence of any evidence let in by the 4th respondent Insurance Company.

7. Moreover, when P.W.2, the eye-witness has categorically stated that because of the rash and negligent driving by the driver of the mini lorry insured with the 4th respondent, the accident occurred, in the absence of any contra or rebuttal evidence, the Tribunal should have held the driver of the mini lorry insured with the 4th respondent Insurance Company responsible for the accident and should have fastened the entire liability on the 4th respondent. Therefore, 50% contributory negligence attributed to the mini lorry insured with the appellant is set aside and the entire negligence is fixed on the driver of the vehicle bearing Registration No. TN 57 R 4212 insured with the 4th respondent, which was driven rashly and negligently, resulting in the accident in question.

8. As far as quantum of compensation is concrned, the Tribunal, taking into consideration, the avocation of the deceased as a Cleaner, determined his monthly income at Rs.6000/- and added 50% towards "Future Prospects", considering his age and arrived at Rs.9000/- as his total monthly income, in consonance with the judgment of the Honourable Apex Court rendered in Syed Sadiq etc. Vs. Divisional Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459(SC). Since the deceased was a bachelor, 50% was deducted towards "Personal Expenses" and as per the age of the deceased, multiplier 17 was rightly adopted and sum of Rs.9,18,000/- was awarded towards "Loss of Income" ((Rs.9000/- (-) 50% (Rs.9000) x 12 x 17)). Further, the sum of Rs.1 lakh awarded towards "Loss of love and affection"; Rs.10,000/- awarded towards " Transportation Expenses"; Rs.5000/- awarded towards "Funeral Expenses" are all reasonable and are confirmed. In all, the sum of Rs.10,33,000/- awarded by the Tribunal as compensation is quite reasonable and it is sustained.

9. In the result, the Civil Miscellaneous Appeal is partly allowed, setting aside 50% contributory negligence attributed to the appellant Insurance Company and the entire liability is fastened on the 4th respondent Insurance Company.

10. In view of fastening of liability on the 4th respondent Insurance Company by this Court, the 4th respondent is directed to deposit the entire award amount, with interest and costs, after deducting the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st respondent is permitted to withdraw only 50% of the amount, as ordered by the Tribunal within a period of two weeks thereafter and the balance 50% of the amount, shall be deposited in anyone of the Nationalised Banks, in interest bearing Fixed Deposit, at least for a period of three years and the 1st respondent is entitled to withdraw interest accruing on such deposit, once in three months. Any amount deposited by the appellant Insurance Company, pursuant to the award of the Tribunal, shall be refunded to them. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nv

To

The MACT (II Addl. District Court),
Tiruppur.

+1cc to Mr.S.Dakshinamoorthy , Advocate, S.R.No.14410
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.14674
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.14649

C.M.A. No. 447 of 2015

CNR(CO)
CA(26/05/2015)