

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

CMA No.1711 of 2008

M/s.United India Insurance Co.Ltd.
Divisional Office II
104-A Peramanur Main Road
Salem-7

... Appellant/2nd
Respondent

vs

1. Poongkothai
Kumar Gounder (died)

2. K.Manohar

3. K.Bhuvaneswari

4. K.Ponnuthayammal

... Respondents 1 to 4/
Claimants

5. M.Palanisamy

... 5th Respondent/1st
Respondent

[R-5 set exparte before the lower court]

Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 07.12.2007 passed by the Motor Accident Claims Tribunal, learned Additional District Judge and Special Judge [incharge] [E.C.Act], Salem in MCOP No.101 of 2005.

For Appellant : Mr.T.Ravichandran

For Respondents : Mr.R.Neelakandan
1 to 4

J U D G M E N T

The United India Assurance Company Limited is the appellant.

2. The claimants, viz., mother, brother, sister and grandmother of the deceased one Kesavan, who died in a road accident that took place on 08.12.2004 went before the Tribunal claiming a compensation in a sum of Rs.5,00,000/-. The Tribunal, on appreciation of oral and documentary evidence, passed an award for a sum of Rs.3,77,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Questioning the quantum, the present appeal has been filed by the Insurance Company.

3. Heard both sides.

4. The learned counsel appearing for the appellant/Insurance Company initially argued that the Tribunal should not have awarded the compensation for the death occurred in the road accident as the deceased travelled in his motor cycle with two other persons. He would further submit that the Tribunal should have apportioned the liability as the deceased had travelled in his motor cycle with two other persons, in violation of the policy condition. He would also submit that the Tribunal should not at all have entertained the petition and awarded the compensation. Accordingly, he would pray for setting aside the same.

5. Learned counsel for the respondents/claimants would submit that the other two persons, who travelled in the motor cycle along with the deceased are college students, who suffered grievous injuries. He would also submit that the deceased was aged only 24 years at the time of accident and he was earning a sum of Rs.3,000/- per month by working in a company. Therefore, he would submit that the Tribunal only after considering the oral and documentary evidence awarded the compensation, warranting no interference in this appeal.

6. On a perusal of the judgment passed by the Tribunal, it is seen that it had considered in detail the entire evidence, both oral and documentary, available on record and awarded the compensation. It has also categorically held that the Insurance Company has not let in any evidence either oral or documentary, viz., by examining either the conductor or driver of the bus to

prove the fact that only because three persons travelled in the motor cycle, the accident had occurred or due to the imbalance, the deceased hit the bus driving the motor cycle in a rash and negligent manner by losing control. In such circumstances, the liability was fixed on the Insurance Company, who is the insurer of the bus, which involved in the road accident. Therefore, I do not find any reason to interfere with the said factual finding given by the Tribunal.

7. As far as the question of quantum is concerned, it is no doubt true that, the deceased was aged 24 years at the time of accident and his parents, lost the love and affection of their son. Had he been alive, he could have earned more and helped them. Considering all these facts and in the peculiar circumstances of the case, the Tribunal awarded only a sum of Rs.3,77,500/- as compensation, warranting no interference in this appeal.

8. It is stated by the appellant-Insurance company that as per the interim order passed by this Court dated 23.06.2008, they had deposited a sum of Rs.2,25,000/- and the respondents/claimants were also permitted to withdraw 50% of the said amount together with proportionate interest and costs.

9. In view of the said submission, the appellant-Insurance Company is directed to deposit the remaining amount within a period of four weeks from the date of receipt of a copy of this order along with proportionate interest and costs. On such deposit being made, the claimants are entitled to withdraw the entire amount along with interest on making out a proper application before the court below.

10. In the result, this Civil Miscellaneous appeal is dismissed. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vj2

To

The Motor Accident Claims Tribunal,
The Additional District Judge
and Special Judge [incharge] [E.C.Act]
Salem.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.54093
+1cc to Mr.R.Neelakandan, Advocate, S.R.No.54349

C.M.A No.1711 of 2008

SV(CO)
CA(30/11/2015)



WEB COPY