

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26/9/2016

C O R A M

The Honourable Mr. Justice S. Manikumar
and
The Honourable Mr. Justice N. Authinathan

Civil Miscellaneous Appeal No. 2127 of 2016

The Branch Manager
IFFCO TOKIO General Insurance Co. Ltd
43/3, 100 Feet road
Mudaliarpet
Puducherry.

... Appellant/2nd Respondent

Vs

1. Sampasivam
2. Devaki
3. Indira
4. Ramani
5. Jayaraman
6. Sundharavel
7. Azhaganantham
8. Anbumani
9. Natarajan
10. Thirumalai

... Respondents 1 to 9/Claimants
10th Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.722 of 2010, dated 16/9/2014, on the file of the Motor Accidents Claims Tribunal, III Additional District Judge, Pondicherry.

For appellant : Mr. M. R. Raghavan

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Aggrieved by the quantum of compensation, IFFCO, TOKIO General Insurance Company Limited, Puducherry, has preferred the instant appeal.

2. With the consent of the learned counsel for the appellant/IFFCO, TOKIO General Insurance Company Limited, Puducherry, appeal is heard and disposed of, at the admission stage itself.

3. Liability fastened on IFFCO, TOKIO General Insurance Company Limited, Puducherry, to pay compensation of Rs.15,88,800/- with interest, at the rate of 7.5% p.a., from the date of claim, till realisation is the only challenge in this appeal, on the grounds inter alia that the Tribunal failed to consider that the criminal case, Crime No.276 of 2010, registered against the driver of Indica car, bearing Registration No.PY01-AE-2223, insured with the above Company, was closed as mistake of fact and that therefore, the Tribunal, ought not to have fastened liability. It is also the case of the Insurance Company that the vehicle was not involved in the accident and falsely implicated for the purpose of claiming compensation.

4. Heard Mr.M.R.Raghavan, learned counsel for the appellant/Insurance Company and perused the materials available on record.

5. As per the version of the legal representatives, on 6/7/2010, at about 8.30 p.m., when their bread winner, was riding a motor cycle, on Dindivanam - Pondy main road, from south to north, near Thailapuram saw mill, a Tata Indica car, bearing Registration No.PY01-AE-2223, insured with IFFCO, TOKIO General Insurance Company Limited, Puducherry/appellant herein, driven in a rash and negligent manner, by its driver, dashed against the motor cycle. Motorcyclist sustained grievous injuries and was taken to Government Hospital, Dindigul. Despite intensive treatment, he died. A case in Crime No.276 of 2010 was registered against the driver of Tata Indica car, on the file of Killiyanur Police Station.

6. On the side of the appellant, R.W.1 and R.W.2 have been examined and Ex.R.1 marked. On the side of the respondents, P.W.1 and P.W.2 have been examined and marked Exs.P.1 to P.13.

7. P.W.1 is the brother of the deceased. P.W.2 is stated to be an eye witness to the accident. Ex.P.1 dated 7/7/2010, copy of F.I.R in Crime No.276 of 2010. Ex.P.2 dated 17/4/2006 is the photocopy of the Registration certificate. Ex.P.3, dated 19/6/2010, is the photocopy of the Insurance certificate. Ex.P.4 dated 17/7/1997, is the photocopy of the driving license of the deceased. Ex.P.5 dated 20/10/2010 is the photocopy of the motor vehicle Inspection report. Ex.P.6, dated 10/12/2009, is the photocopy of the driving licence of the car driver. Ex.P.7, dated 7/7/2010, is the photocopy of the post-mortem. Ex.P.8, dated 7/7/2010, is the photocopy of the rough sketch. Ex.P.9 is the photocopy of the family ration card. Ex.P.10 is the salary certificate of the deceased. Ex.P.11 is the photocopy of the family ration card of the third claimant. Ex.P.12 is the family ration card of the fourth claimant. Ex.P.13 is the photocopy of the family ration card of the fifth claimant.

8. R.W.1, driver of the Tata Indica car, bearing Registration No.PY01AE-2223 and R.W.2 official of the Insurance Company have disputed the manner of accident.

9. Evaluating the pleadings and evidence, the Tribunal held that the driver of the Tata Indica car, bearing Registration No.PY01AE-2223, alone was negligent in causing the accident. Though the Insurance Company has assailed the correctness of the finding, on the grounds inter alia that the criminal case was closed as mistake of fact and the vehicle was not involved in the accident, this Court is not inclined to accept the said contentions for the reason that even the statement of R.W.1 driver of Tata Indica car to the effect that the criminal case was closed is not corroborated by any supporting documentary evidence.

10. On the other hand, the oral testimony of P.W.1, is supported P.W.2 eye witness and corroborated by F.I.R in Crime No.276 of 2010, registered under Section 304 A of the Indian Penal Code on the file of Killiyanur Police Station, registered against the driver of TATA Indica car.

11. Testing the finding of negligence, on the principles of preponderance of probability, there are no grounds for reversal. Hence the finding with regard to negligence is confirmed.

12. Thus, while concurring with the finding of the Tribunal of negligence and quantum, this Civil Miscellaneous Petition is dismissed. No costs.

13. IFFCO TOKIO General Insurance Company Limited, sis directed to deposit the entire award amount, with accrued interest and costs, less the statutory deposit, to the credit of M.A.C.T.O.P.No.722 of 2010, on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Pondicherry, within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The III Additional District Judge
The Motor Accidents Claims Tribunal
Pondicherry

+1 cc to Mr.M.B.Raghavan Advocate sr 55609

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