IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1630 OF 2017
AND CMP NO.8616 OF 2017

M/s.The New India Assurance Company Limited
Rep. by its Branch Manager
No.105-A, Railway Station Road,
Tirupattur Town and Taluk,
Vellore District. ... Appellant/IInd Respondent

Versus

1.Padma
2.Minor Abhil
rep by his mother Padma R1
3.Kodi Pavunu
4.Kolanji ...Respondents 1 to 4/
Petitioners 1 to 4
5.M.Sasikumar ...5th Respondent/Ist
Respondent

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 02.11.2015 made in MCOP No. 169 of 2014, on the file of the Motor Accidents Claims Tribunal (Court of Special District Judge) Krishnagiri.

For Appellant : Mr.J.Michael Visuvasam
For Respondents
1 to 4 : Mr.T.Panchatsaram

J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the award passed by the Motor Accidents Claims Tribunal (Special District Judge) at Krishnagiri, in MCOP No.169 of 2014, dated 02.11.2015, insurance company preferred the appeal.

2. The main contention in this appeal is that the accident occurred due to the negligence, on the part of the deceased. The accident has taken place on 13.12.2013. According to the claimants, the offending vehicle viz., Lorry bearing Registration No.TN20-BZ-7157 was going ahead of the motorcyclist and suddenly turned to the left side of the road without any signal, sounding horn and indicator. Unexpectedly, the driver of the lorry negligently turned the vehicle to the left side, to avoid hitting the lorry from behind, the motorcyclist applied sudden break. The motorcycle skidded and hit the lorry. On account of the same, he sustained fatal injuries to his vital organs, and died on the spot.

3. Learned counsel for the appellant would submit that on a perusal of the Motor Vehicle Inspector's report, it is clear that the motorcyclist was not having a valid driving license and the legal representatives not produced any insurance certificate. Secondly, the accident had taken place due to the negligence of the deceased motorcyclist. According to him, it is the motorcyclist who hit the lorry and he could have exercised care and caution and avoided the accident. It is contended that for the default of the motorcyclist, negligence cannot be attributed to the lorry driver. As motorcyclist was not having license, the appellant / insurance company is not liable to pay the compensation.

4. We have perused the evidence of P.W.2 and P.W.3. Both of them are eyewitnesses to the accident. They have adduced evidence cogently that negligence was on the part of the driver of the lorry. During cross examination also, they have clearly stated that the driver of the lorry has not given any signals or indicator before turning the lorry to the left side of the road. The lorry had suddenly swerved to the left side, keeping those behind, unaware. They have also deposed that the motorcyclist was riding the two wheeler carefully and denied the suggestion that the accident was due to the negligence, on the part of motorcyclist. The Inspector of Police has clearly stated that the First Information Report and Charge Sheet have been filed against the lorry driver and also that there was no complaint that the accident had occurred due to the negligence of the motorcyclist.

5. In the given circumstances, the driver of the lorry, should have indicated that the lorry is going to turn to the left. It is a Tipper lorry and turned suddenly to the left side. In such circumstances, one would be certainly taken aback and frantically apply brakes to avert collision. The deceased had consciously applied the break and the motorcycle skidded. In such circumstances, the motorcyclist as a prudent man, with care and caution had tried to avoid the accident, but due to the rash and negligent act of the lorry driver, the accident has

occurred. The Tribunal below has rightly concluded that negligence on the part of the driver of the lorry and the insurance company, which covers insurance of the lorry is liable to pay the compensation.

6. Since negligence and liability alone are challenged in this appeal, we are not inclined to go into the aspect of quantum of compensation.

7. In the result, the finding of the Tribunal does not require any interference and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

8. Record of proceedings shows that the appellant - insurance company has already deposited the entire amount with proportionate interest and costs. The respondents 1 to 4 / claimants are permitted to withdraw their respective shares, on filing proper applications before the Tribunal. In so far as the share apportioned to the minor is concerned, the same should be deposited in favour of the minor viz., second respondent, in a Nationalised Bank, proximate to the residence of the mother and guardian, in a reinvestment scheme, till he attains majority. The first respondent / mother is entitled to withdraw interest accrued thereon, once in three months, for the welfare of the minor. The apportionment given by the Tribunal can be applied for the rest of the amount.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

TK
To
The Special District Judge,
The Motor Accidents Claims Tribunal
(Special District Court)
Krishnagiri.

+1 cc to Mr.T.Panchatsaram Advocate sr 41920
+1 cc to Mr.J.Michael Visuvasam Advocte sr 41888

CMA.No.1630 of 2017

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