

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.584 of 2017
and C.M.P.No.3461 of 2017

The Oriental Insurance co. Ltd.
Sri Bankaj Complex, 2nd Floor,
P.B.No.3003,
89, Perambur Farax Road,
Chennai.

... Appellant / 3rd Respondent

versus

1. Rajendran
2. Madhu @ Matheswari ... Respondents 1&2/Petitioners
3. S.Gnanamoorthy ... 3rd respondent/1st respondent
4. M/s.East Coast Construction and Industries (P) Ltd.,
4, Moores Road, Chennai. ... 4th respondent/2nd respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 16.06.2004 made in M.C.O.P.No.987 of 2001 on the file of the Principal District Judge, Erode.

For Appellant : Mr.Rajasekhar
For Respondents : No appearance

JUDGMENT

The Insurance Company has filed this Civil Miscellaneous Appeal, challenging the negligence as well as the quantum of compensation awarded by the Principal District Judge, Erode, in M.C.O.P.No.987 of 2001, on 16.06.2004.

2. In respect of death of the minor child, aged 4 years, the parents filed a claim petition before the Tribunal, claiming compensation of Rs.2,00,000/-.

3. As against the claim made, the Tribunal has awarded a sum of Rs.75,000/-, payable with interest at the rate of 9% p.a. from the date of petition till the date of deposit.

4. The learned counsel appearing for the appellant would submit that negligence was on the part of the deceased child and therefore, the Insurance Company is not liable to pay compensation.

5. In normal parlance the word 'negligence' denotes carelessness. In legal sense it signifies failure to exercise standard of care . In general, there is a legal duty to take care when it was reasonably foreseeable that failure to do so

was likely to cause injury.

5.1. According to Winfield and Jolowicz - Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff [Ref. Winfield and Jolowicz on Tort, Ninth Edition, 1971, p. 45].

5.2. In Blyth v. Birmingham Water Works Co., (1856) LR 11 Exch. 781; ALDERSON, B. defined negligence as, negligence is the omission to do something which a reasonable man..... would do, or doing something which a prudent or reasonable man would not do.

5.3. So far as this case is concerned, the victim child is aged only 4 years. Child is not expected to take care of itself. At the most, under certain circumstances, the parents can be held responsible, where, the parents have not exercised proper control or supervision over the child.

5.4. The evidence available in this case do not show that any negligence can be attributed on the part of the child, as the child at the age of 4 years is not expected to know what is meant by care at all and the child is expected to be taken care of by all others.

6. So far as the compensation is concerned, the award amount of Rs.75,000/- is very meager. Therefore, the quantum of compensation cannot be assailed as excessive. Hence, the appeal is liable to be dismissed.

7. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 16.06.2004 passed in M.C.O.P.No.987 of 2001 by the Principal District Judge, Erode.

8. The Insurance Company is directed to deposit the entire amount of compensation, less the amount already deposited, if any, along with interest at the rate of 9% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimants are permitted to withdraw their share of the amount as per the ratio of the apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(Principal District Judge), Erode.
2. The Section Officer
V.R. Section, High Court, Madras.

C.M.A.No.584 of 2017

SP(01/08/2017)



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