BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

C.M.A.(MD)No.27 of 2017
and
C.M.P.(MD).No.265 of 2017

The United India Insurance Co. Ltd.,
through its Divisional Manager,
South Main Road,
Thanjavur Town. .. Appellant/ 2nd respondent

Vs.

1.Lourduraj

2.Christina Nalini .. Respondents 1 and 2/ Petitioners

3.Sathiya .. 3rd respondent/ 1st respondent

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.768 of 2006, dated 31.03.2010, on the file of the Motor Accidents Claims Tribunal cum Principal District Judge, Thanjavur.

For appellant : Mr.G.Prabhu Rajadurai

For respondents 1 & 2 : Mr.C.Jeganathan

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

This appeal has been filed by the Insurance company questioning the quantum of compensation of Rs.17,90,975/- awarded by the Tribunal in M.C.O.P.No.768 of 2006, dated 31.03.2010, as against claim of Rs.1,20,00,000/- made by the first and second respondents herein / the father and mother of the deceased Arasan John, who died in a motor accident on 10.08.2006.

2.The brief facts which are necessary to decide this appeal are as follows:

(a) The case of the claimants / respondents 1 and 2 herein is that on 10.08.2006, the deceased Arasan John, who was studying 1st year MBBS Course in Vinayaga Mission Hospital, Karaikkal, was riding the two wheeler bearing Registration No.TN-49-H-7372 and his grandmother was pillion rider. They were proceeding from west towards east on P.K.Salai. While so, a tanker lorry bearing Registration No.TN-04-U-0689 which came on the backside of the deceased in a rash and negligent manner, dashed against the two wheeler of the deceased, due to which, the deceased and his grandmother fell down from the two wheeler and they sustained head injuries and multiple injuries all over their body. Immediately, they were taken to the Hospital. But, on the way to the hospital, the deceased Arasan John succumbed to the injuries. Hence, they made a claim of Rs.1,20,00,000/- as compensation.

(b) The Insurance Company has resisted the claim of the claimants / respondents 1 and 2 by filing a counter affidavit stating that the accident occurred only due to carelessness and rash and negligent driving of the rider of the two wheeler and that the insured lorry was driving slowly and carefully. While ridding the two wheeler, the deceased, chatting with the pillion rider, suddenly, turned to his right side without giving signal for the reasons best known to him. The lorry driver, who would not have anticipated this, further slowed down the lorry which practically came to a halt. But, the deceased, after seeing the lorry, got scared and unable to control the vehicle and dashed against the lorry and invited the accident. Hence, no liability can be fixed on the driver of the lorry and vicariously on the insurance company. It has also been stated by the Insurance company that the compensation claimed by the claimants is highly excessive.

(c) In order to prove the claim, on the side of the claimants, Pws.1 to 4 were examined and Exs.P1 to P29 were marked. On the side of the appellant, neither a witness nor a document was marked. The Tribunal, after analysing the evidence, has come to the conclusion that the accident is the result of the rash and negligent driving of the driver of the lorry insured with the appellant/Insurance company and the Tribunal, by notionally fixing the income of the deceased as Rs.20,000/- p.m., and by awarding compensation under other heads, has awarded the total compensation of Rs.17,90,975/-. Aggrieved by the same, the present appeal has been filed by the Insurance company.

3.The main contention of the learned counsel for the appellant / Insurance company is that the accident had occurred only due to the rash and negligent driving of the rider of the two wheeler viz., deceased. It is also submitted by the learned counsel for the appellant that at the time of ridding he was frequently turning back and chatting with his grandmother, who was travelling as pillion rider and as a result, when he saw the lorry, he scarred and lost control over his vehicle and dashed his vehicle against the lorry and thus, he himself invited the accident. But, the said defence of the appellant has not been properly considered by the Tribunal. Hence, the award passed by the Tribunal, by fixing the entire liability on the driver of the lorry, is liable to be set aside.

4.The learned counsel for the respondents/claimants submitted that the Tribunal, after analysing the entire evidence, has come to the conclusion that the driver of the lorry insured with the appellant / Insurance company was only responsible for the accident and the same need not be interfered with. Thus, he prayed for dismissal of the appeal.

5.Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

6.Though the learned counsel for the appellant / Insurance company vehemently contended that due to the carelessness of the rider of the two wheeler the accident has occurred, in order to prove the same, neither oral nor any documentary evidence has been marked on the side of the appellant / Insurance company. Even the driver of the lorry, who caused the accident, has not been examined to establish the said submission. It is well settled law that mere pleading is not an evidence, unless the same is recorded in the manner known to law. In the absence of any such evidence, we are not inclined to interfere with the finding of the Tribunal that the driver of the lorry insured with the appellant / Insurance company alone is responsible for the accident.

7.So far as the quantum of compensation is concerned, it is stated that the deceased was studying first year MBBS Course and by considering the said aspect, the Tribunal has notionally fixed a sum of Rs.20,000/- per month and after deducting 1/3rd amount for the personal expenses, the Tribunal has arrived at a sum of Rs.1,60,000/- per annum as a contribution to the family and by applying multiplier No.11, the Tribunal has arrived at a sum of Rs.17,90,975/- as annual loss of income. Absolutely, we do not find any infirmity in the decision arrived at by the Tribunal. Thus, we are inclined to dismiss the appeal.

8. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. No costs. The appellant / Insurance Company is directed to deposit the entire award amount with 7.5% interest per annum from the date of petition till the date of deposit, less the amount already deposited, if any, before the Tribunal, 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 respective shares, as apportioned by the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accidents Claims Tribunal,
Thanjavur.
+1 CC to M/s.G.PRABHU RAJADURAI , Advocate, SR No. 4242
+1 CC to M/s.VEERA ASSOCIATES, Advocate, SR No. 4000
GCG
PSM/SV-MMS/SAR3/27.04.2017/4P/4C

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