

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1358 of 2005

The Divisional Manager,
Oriental Insurance Co.Ltd.,
Vellore

..Appellant/2nd Respondent

Vs.

1.Ameeth
2.Mumthaj
3.R.Perumal

..Respondents/Petitioners &
1st Respondent

Prayer : Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No. 34 of 2001 on the file of the Motor Accidents Claims Tribunal (subordinate Judge) at Cheyyar, dated 30.04.2004.

For Appellant : Mr.M.Krishanmoorthy

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Oriental Insurance Company against the award dated 30.04.2004 made in MCOP. No. 34 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Cheyyar.

2. Heard the learned counsel appearing for the appellant and perused the materials available on record.

3. The appellant/Insurance Company is 2nd respondent in MCOP. No. 34 of 2001 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Cheyyar. The respondents 1 & 2 being legal heirs have filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of their son in the said accident that took place on 29.09.2000. The tribunal considering the pleadings, oral and documentary

evidence, held that the accident occurred due to the negligence on the part of the driver of the lorry bearing registration no TSC 970 and directed both the 2nd respondent as well as the appellant-Insurance Company being insurer of the said lorry to pay jointly and severally, a sum of Rs.3,42,000/- as compensation to the respondent 1 & 2/claimants. Challenging the liability fastened on them, by award dated 30.04.2004 made in MCOP. No. 34 of 2001, the appellant-Insurance Company has come out with the present appeal.

4. The learned counsel appearing for the appellant-Insurance Company contended that the deceased who drove the vehicle was not under employment and also denied that he was possessing the valid driving license to valid permit for the vehicle to ply as on date. The learned counsel further contended that the claim application has to be dismissed on the point that the owner and insurance of the car, which was driven by the son of the claimants were not made as a party for proper adjudication. The Tribunal has also committed an error by fixing the liability on the driver of the lorry and since it is a head on collision, both the drivers ought to have held responsible for the accident. The other contentions is fixing Rs.5000/- as monthly salary for the deceased.

5. On perusal of the award, it is seen that on the side of the petitioner PW1 was examined and Exhibits P1 & P2 were marked and on the side respondents RW1 was examined and no exhibits were marked. It is also seen that the tribunal on considering the fact that the claimants, who are the parents of the deceased have lost their son, on whose income they were depending for their lively hood, has fixed the monthly income at Rs.25,00/- even in the absence of any proof for income and calculated the loss of income at Rs. 3,40,000/- by applying multiplier 17 and deducting 1/3 towards his personal expenses. The tribunal has also awarded a sum of Rs.2000/- towards 'Funeral Expenses'. Hence, the total compensation awarded by the tribunal is Rs.3,42,000/-.

6. It is further seen that the Tribunal has observed that a case has been registered in the Solavaram Police Station only against the driver of the lorry and no case has been registered as against the deceased. The investigation report also says after conducting enquiry, a case has been registered against the driver of the lorry for his negligence driving before the Judicial Magistrate No.2, Ponneri and the same is pending. Hence, the tribunal has given finding that the accident had occurred only due to the negligence on the part of the driver of the lorry which belongs to the 1st respondent. In view of the evidence and documents, this Court if of the considered view that the award passed by the tribunal is reasonable and proper

and does not require any interference.

6. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.3,42,000/- awarded by the Tribunal as compensation to the respondents 1 & 2/claimants, along with interest and costs is confirmed. Both the appellant-Insurance Company as well as 3rd respondent are directed to deposit the entire amount awarded by the Tribunal along with interest and costs, jointly and severally, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 & 2/claimants are permitted to withdraw their respective share in the award amount, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To
The Subordinate Judge,
Motor Accidents Claims Tribunal,
Cheyyar,

copy to

The Section Officer
VR Section High Court,
Madras

+1 cc to Mr.K.G.Senthil Kumar Advocate sr68700
+1 cc to Mr.M.Krishnamoorthy Advocate sr68578

sr(co)
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