IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 1228 of 2018
&
C.M.P. No. 10005 of 2018

Shriram General Insurance Co. Ltd.,
10003-E, 8 RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan - 302 022. ... Appellant

Vs.

1. J.P. Pooja @ Pallavi
2. Minor Surya
(Minor respondent represented by
his mother and next friend
Pooja @ Pallavi)
3. Duraisamy
4. M. Chandira
5. R. Sivaprakash

6. Royal Sundaram Alliance Insurance
Company Ltd.,
8/H1, Mangalam Building, Four Roads,
Omalur Main Road,
Salem - 636 009. ... Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 10.11.2017 passed in M.C.O.P. No. 76 of 2014 by the Motor Accidents Claims Tribunal (Special District Court), Dharmapuri.

For Appellant :: Mr.S. Dhakshnamoorthy

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company, as against the fastening of negligence on the part of the driver of the lorry, which was insured with the appellant Insurance Company and awarding a sum of Rs.14,74,000/- as compensation to the legal heirs of one Suresh @ Durai, aged about 27 years, a lorry driver, allegedly earning about Rs.15000/- permonth in the accident, which occurred on 11.04.2011 when the victim, who was driving his pickup van, dashed against the left backside of the lorry, belonging to the 4th respondent and insured with the appellant insurance company, which was going in front, as it suddenly stopped at the centre of the road, without showing any signal.

2. Heard Mr.S. Dhakshnamoorthy, learned counsel for the appellant. He would submit that the accident occurred because of the rash and negligent driving of the pickup van and the negligence of the deceased alone caused the accident. He would also point out that Ex-P1 FIR has been registered against the deceased and the final report has also been filed against him. Reliance has been placed on the evidence of R.W.3, the driver of the insured vehicle, who would state that the insured vehicle was driven carefully and only the victim, who was coming behind, attempted to overtake the lorry on the right side and in the process, the right side of the van hit the rear left side of the insured vehicle. Therefore, the liability fastened on the driver of the insured vehicle has to be set aside.

3. This Court perused the records and heard the learned counsel for the appellant.

4. No doubt, Ex-P1 FIR has been filed against the deceased, who was the driver of the pickup van. But, merely because the FIR has been registered as against the deceased, it could not be assumed that it was the deceased, who was the tort-feasor. Moreover, FIR was given by the driver of the lorry and no one could expect the driver of the lorry, whose vehicle was also involved in the accident, to admit that he was at fault. The FIR lodged by the driver of the lorry, who would be all the more interested in safeguarding himself, cannot be taken as gospel truth. On the other hand, on the side of the victim, P.W.2, an eye-witness, who travelled along with the deceased in the pickup van has been examined and he would categorically state that the insured vehicle was proceeding in front of the pickup van and the pickup van was proceeding near to the rear right side of the lorry and all of a sudden, the driver of the lorry applied break and the collision was inevitable. Appreciating the evidence of P.W.s 2 and 3, and Ex-R3, rough sketch, the Tribunal found that the road was a two-way road and that being so, on the left hand side, there would not be possibility for any vehicle to overtake, especially, when a vehicle was proceeding in front. The Tribunal, considering the damage caused to the front right side of the pickup van and rear

left side of the insured vehicle, came to the conclusion that the lorry should have been proceeding on the right side of the road and without any signal, should have suddenly turned towards left and thereby, the vehicle, which was coming behind, would have hit against the insured vehicle. Therefore, the Tribunal found that the driver of the insured vehicle alone was responsible for the accident. The said finding is based on evidence and that cannot be set aside. Further, when P.W.2 has given evidence on oath stating that the driver of the insured vehicle alone was responsible for the accident, that should be given more credence than the FIR, which is nothing but recording of the accident and initiation of criminal proceedings. Therefore, P.W.2's evidence was rightly given credence by the Tribunal to conclude that the accident occurred because of the rash and negligent driving by the driver of the insured vehicle and the said finding, based on evidence, cannot be interfered with.

5. Since no argument was advanced with regard to the quantum of compensation, this Court is not going into the said issue.

6. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, before the Tribunal, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of major claimants to their respective bank accounts, through RTGS, within a period of one week thereon, in the ratio fixed by the Tribunal. The share of the minor/2nd respondent shall be deposited in any one of the Nationalised Banks in interest bearing Fixed Deposit til he attains majority. The 1st respondent/mother is entitled to withdraw interest accruing on such deposit once in three months.

7. In the result, the Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nv
To

The MACT (Special District Court),
Dharmapuri.

+2cc to Mr.S.Dhakshnamoorthy, Advocate Sr.38063, 40502

C.M.A. No. 1228 of 2018

gmr[co]
srg 26/07/2018