

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1595 of 2011

and

M.P.No.1 of 2011

The Divisional Manager,
M/s. Oriental Insurance Co. Ltd.,
Gopal Rao Building, 1st Floor,
Town Hall Road, Kumbakonam,
Thanjavur District.

.... Appellant/ R2

..Vs..

- 1.Pachamuthu
- 2.Dhanalakshmi
- 3.Minor Sridhar

- 4.Minor Sripal
- Minors RR3 &4 rep.by
mother and next friend R2)

...Respondents 1to4/Petitioners 1to4

- 5.Gnanasekaran
- 6.Ezhilarasy

(Respondents 5 and 6 ex-parte in Lower Court.
And hence notice may be dispensed with)

- 7.The Divisional Manager,
M/s. United India Insurance Co. Ltd.,
No.46, J.N.Street,
Pondicherry.

...Respondents 5to7/Respondents 1, 3 & 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment in M.C.O.P.No.243 of 2008 dated 14.02.2011, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Pondicherry.

For Appellants : Mr.N.Vijayaraghavan

For Respondent : Mr.M.Devaraj for R1 to R4
Mr.S.Arunkumar for R7

: RR5 & 6 - Ex-parte

JUDGMENT

This appeal is filed by the Divisional Manager, M/s. Oriental Insurance Company Limited, Gopal Rao Building, first floor, Town hall road, Kumbakonam, Thanjavur District, under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 14.02.2011 in M.C.O.P.No.243 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Pondicherry

2.The brief case of the claimants is as follows:

On 17.12.2007 at about 03.00 am while the deceased Parthasarathy who is the son of the claimants 1 and 2 and brother of claimants 3 and 4 was driving a TATA Sumo Victa car bearing Registration No.PY-01-AA-7117 along with his relatives and friends of the third respondent on Kumbakonam-Moopakoil Bypass road, a van bearing Registration No.TN-49-W-7394 driven by its driver in a rash and negligent manner hit the Tata Sumo car, as a result of which, the deceased lost control over his car resulting in Head on Collision with the said van. The driver (deceased Parthasarathy) and one another person died on the spot while others sustained grievous injuries.

3.According to the claimants, the deceased was unmarried and was working as a driver in the third respondent's vehicle earning a sum of Rs.6,000/- per month. The trial court after analysing the entire evidence on record had held that the fifth respondent's driver is responsible for the accident and that since his vehicle is insured with the present appellant, both are jointly and severally liable to pay compensation of Rs.6,27,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved over the same, the present appeal is filed by the Divisional Manager, M/s. Oriental Insurance Company Limited.

4.Mr.M.Devaraj , learned counsel appearing for the second respondent would contend that since there are two vehicles involved in the present case, the negligence should be apportioned in the ratio 50:50. The Trial Court has held thus:

"While the petitioners have proved the manner of accident as pleaded in the petition through PW-2 Natarajan, no such action or any interest has been taken by the second respondent to disprove the manner of accident as pleaded by the petitioners and as established through PW-2 Natarajan, and also to prove the contents of the FIR Ex.A1 as

true one either by filing of a final report and rough sketch or by adducing evidence through any independent witness or Investigating Officer concerned in the criminal case. As already stated, the second respondent is silent in this regard without raising any strong contention in its counter as well as during the cross-examination of PW-2. In the counter filed by the fourth respondent Insurance company it is pleaded that the accident had happened only due to the negligence of the driver of the first respondent's vehicle. It is neither of the parties in this case that the accident occurred in the middle of the road and it is in head-on-collision. As explained by the learned counsel for the petitioners regarding the directions, from the fact that the vehicle of the third respondent was going towards Sabarimala on the said road and the vehicle of the first respondent was coming from Thirunelveli on the said route, it is presumed that the vehicle of the third respondent was going towards east, and the vehicle of the first respondent was coming towards west, as correctly pointed out by the petitioners, and as such, it can be taken that the petitioner's case regarding the manner of accident is to be a true one. From perusal of the damage particulars noted in Exs.A6 and A7 copies of Accident Inspection Reports it is noticed that the right side of both the vehicles got completely damaged. Ex.P9 copy of Post-mortem certificate also supports the case of the petitioners. For the foregoing reasons, it is held that the accident had occurred due to the rash and negligence of the driver of the first respondent's Mahendra van No.TN-49-W-7394 and the driver of the first respondent is responsible for the accident. Hence, this point is answered accordingly."

The essence of the observations made by the Trial Court as quoted above is valid and meaningful. It cannot be faulted with except for the grammatical errors found and therefore, the orders passed by the Presiding Officer, Principal District Judge, Motor Accident Claims Tribunal, Puducherry is upheld. There is no dispute with regard to quantum of compensation awarded by the Motor Accident Claims Tribunal.

5.In the result, the appeal is dismissed. No order as to costs. Consequently, the connected Miscellaneous Petition is closed.

mbi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.77129
+1cc to Mr.M.Devaraj, Advocate, S.R.No.76858
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.77116

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and
M.P.No.1 of 2011

EV(CO)
KAK(23/01//2019)

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