IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2756 of 2009
and
M.P.No.1 of 2009

The Oriental Insurance Co.Ltd,
159, Kumaran Road,
A.A.Complex, 1st Floor,
Tiruppur Taluk,
Coimbatore District. ..Appellant

Versus

1.Iyyamperumal
2.Muniyathal
3.Myilsamy
4.Ramajayam Motor Service,
New No.9-C, Thennampalayam Main Road,
Old No.2-T(1), Kasba Tirupur,
Tirupur Taluk, Coimbatore District.
5.Karuppiah
6.Singaram

7.United India Insurance Co.Ltd.,
78, Kamarajar Salai, Kaveri Nagar,
Kulithalai Post,
Karur District. ..Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 12.01.2009 made in M.C.O.P.No.768 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court-III, Dharapuram-Erode.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.Guruprasad [for R1 & R2]

*****

J U D G M E N T

The Appellant/3rd respondent/Insurance Company has filed this appeal against the judgment and decree dated 12.01.2009 made in M.C.O.P.No. 768 of 2007 on the file of the Motor Accident Claims Tribunal, Fast Track Court-III, Dharapuram-Erode.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

3. The case of the petitioners/claimants is that on 15.05.2007 at about 4.30 a.m., while the deceased was working as a cleaner in the bus belonging to the 2nd respondent bearing Registration No.TN-39-K-9266, the driver of the bus - 1st respondent herein, while proceeding from Madurai to Aruppu Kottai, lost control of the vehicle, due to the high speed dashed behind the lorry bearing Registration No. TN-37-M-6959 causing fatal injuries to the deceased, who subsequently died in the hospital. The accident occurred only due to the negligence of the 1st respondent bus driver. At the time of the accident, the deceased was aged 25 years and by working as a cleaner was earning Rs.6,000/- per month. The petitioners/claimants who are the parents of the deceased seek compensation of Rs.10,00,000/- from the respondents for the death of their son.

4. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 3rd respondent/Insurance Company contends that the accident did not occur in the manner as alleged by the petitioners/claimants. The police have registered the case wrongly against the driver of the 1st respondent, but it was only due to the negligence of the 4th respondent driver who drove the lorry at high speed in a careless manner and stopped the vehicle, suddenly the accident occurred. The deceased was a gratuitous passenger and as such he is not entitled to ask for compensation. The age, avocation and income of the deceased at the time of the accident is not true. Hence, the 3rd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioners/claimants examined P.W.1 and P.W.2, produced documents Exs.P.1 to P.19 to prove their claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available materials on record, found that the negligence of the 1st respondent bus driver alone caused the accident and awarded a sum of Rs.4,85,000/- payable by the 1st to 3rd respondents who are the driver, owner and insurer of the vehicle, in which, the deceased travelled. Being not aggrieved over the quantum of the award passed by the Tribunal, the 3rd respondent/Insurance Company has come forward with the present appeal.

6. The learned counsel for the 3rd respondent/Insurance Company contends that the Tribunal wrongly fixed the income of the deceased at Rs.3,750/- per month without any proof and erred in applying multiplier '15'. The amount awarded by the Tribunal is highly excessive. Hence, the 3rd respondent/Insurance Company challenges the quantum of the compensation awarded by the Tribunal and sought for allowing the appeal.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

7. On the other hand, the learned counsel for the petitioners/claimants contended that the occurrence took place only due to the negligence of the driver of the 2nd respondent, who is the owner of the bus and for the injury suffered by the petitioners/claimants, the respondents 2 and 3, who are the owner and insurer of the said bus are liable to pay compensation. The Tribunal correctly assessed the disability suffered by the petitioners/claimants and passed an award for just and proper compensation. There is no ground to interfere with the same.

8. The Tribunal, on the basis of available evidence on record, found that on 15.05.2007 at about 4.30 a.m., the accident occurred in the Madurai Road near Narikudi Vilakku and the police registered Ex.P.1 - F.I.R against the 1st respondent driver only. The Rough Sketch and Observation Mahazar prepared at the spot is produced as Exs.P.2 and P.3 respectively. After investigation was completed, the police laid Ex.P.3 - Charge sheet against the 1st respondent driver. It is thus clear from the same that the accident occurred only due to the negligence of the 1st respondent driver. Even though the 3rd respondent/Insurance Company contended that the accident occurred only due to the negligence of the lorry driver, there is no evidence to prove the same. The driver of the 2nd respondent bus has not been examined. As such, the oral evidence of P.W.1 clearly proved the fact of negligence on the part of bus driver alone caused the accident. The Tribunal, found that the offending vehicle belongs to 2nd respondent and the 1st respondent who drove the vehicle at the time of accident. As per Ex.P.15 - Policy copy offending vehicle was insured with the 3rd respondent. As such, the Tribunal found that only the respondents 1 to 3 are liable and the respondents 4 to 6 who are the driver, owner and insurer of the stationary lorry are no way connected with the occurrence and they are not liable to pay any compensation.

9. The 3rd respondent/Insurance Company which has come forward with the Appeal has seriously disputed the monthly income fixed by the Tribunal and also contended that the multiplier adopted by the Tribunal is not correct. The learned counsel for the 3rd respondent/Insurance Company also pointed out that 50% of the income ought to have been deducted towards personal expenses of the deceased.

10. On the other hand, refuting the same, the learned counsel for the petitioners/claimants pointed out that the Tribunal, on the basis of Ex.P.9 - Legal heir certificate, found that the petitioners/claimants are the legal heirs of the deceased and as both of them were dependants on the income earned by the deceased correctly deducted 1/3rd of the income towards personal expenses. It is also pointed out that as per Ex.R.7 - Post mortem report as well as Ex.P.8 - Death certificate, the age of the deceased Balasubramani was '25'. Further, by working as a cleaner was earning Rs.6,000/- per

https://hcservices.ecourts.gov.in/hcservices/
WEB COPY

month. Thus, the petitioners/claimants contended that the Tribunal has correctly fixed the monthly income and also adopted the correct multiplier.

11. The Tribunal after considering Ex.P.18 - Salary certificate of the deceased found that the author of the said document is not examined and also the Salary Register or Appointment order of the deceased is not produced and therefore, found that by working as a cleaner the deceased would have earned Rs.3,750/- per month. Considering the fact that the accident occurred during 2007, the said sum of Rs.3,750/- fixed by the Tribunal is appropriate, just and proper. Likewise, the multiplier '15' applied by the Tribunal is also in accordance with the Provisions of the Motor Vehicles Act.

12. Considering the said facts, this Court is of the view that there is no valid ground raised by the 3rd respondent/Insurance Company to modify or to set aside the Award passed by the Tribunal. The 3rd respondent/Insurance Company has not seriously disputed the conclusion of the Tribunal about the negligence/liability aspect. As stated earlier, the only grievance relates to the quantum of the Award passed by the Tribunal. In the light of the above stated circumstances, the contention of the 3rd respondent/Insurance Company seeking to set aside the Award is unfounded and unacceptable. This Court, finds no merit in the Appeal grounds raised by the 3rd respondent/Insurance Company. Thus, the Appeal has to fail. Point is answered accordingly.

13. In the result, the Appeal filed by the 3rd respondent/Insurance Company is dismissed and the Award passed by Tribunal is confirmed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

WEB COPY

bri
To

1.The Fast Track Court-III,
Motor Accident Claim Tribunal,
Dharapuram-Erode.

2.The Section Officer,
V.R.Section, High Court, Madras.
+1cc to Mr.S.ARUNKUMAR, Advocate SR.No. 22948

ASK(11/10/2018)

https://hcservices.ecourts.gov.in/hcservices/