

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2817 of 2018

and

C.M.P.No.21489 of 2018

M/s.Bajaj Allianz General Insurance Company Limited,
Branch Office at T.T.K.Complex,
Door No.84/1, First Floor, Perundurai Road,
Erode District, Opp. to Collectorate Office,
Erode - 638 011.

... Appellant /2nd Respondent

Vs.

1.Tmt.Chinnapappa

2.Murugesan

3.Kavitha

... Respondents 1 to 3/Petitioner

4.Prabhu

5.Kaliappan

... Respondents 4 & 5/Respondent 1 & 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.02.2018 made in M.C.O.P.No.199 of 2014 on the file of Motor Accidents Claims Tribunal, Sub Court, Rasipuram.

For Appellant

: MS.C.Harini for
M/s.M.B.Gopalan Associates

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 19.02.2018 made in M.C.O.P.No.199 of 2014 on the file of Motor Accidents Claims Tribunal, Sub Court, Rasipuram.

2.The appellant/Insurance Company is second respondent in M.C.O.P.No.199 of 2014 on the file of Motor Accidents Claims Tribunal, Sub Court, Rasipuram. The respondents 1 to 3 filed the above claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Ramasamy, who died in the accident that took place on 09.11.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the rider of the motorcycle belonging to the fourth respondent and the appellant/Insurance Company being the insurer of the vehicle is liable to pay a sum of Rs.9,10,000/- as compensation to the respondents 1 to 3.

4.Against the said award dated 19.02.2018 made in M.C.O.P.No.199 of 2014, the appellant has come out with the present appeal challenging the liability fastened on them.

5.The learned counsel appearing for the appellant contended that the Tribunal has erred in fixing entire negligence on the part of the fourth respondent. The Tribunal has failed to consider that F.I.R. was lodged by the son of the deceased, the second respondent herein, only against the fifth respondent and the charge sheet was also filed against the fifth respondent. The Tribunal without properly considering the evidence in the form of F.I.R. and final report of the police, fixed entire liability on the part of the fourth respondent by accepting the evidence of interested witness/P.W.2. He further contended that the accident had occurred only due to the negligence on the part of the fifth respondent and the compensation granted by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

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

7.The contention of the learned counsel appearing for the appellant is that F.I.R. was lodged against the fifth respondent and charge sheet was also laid on the fifth respondent and in view of the same, the Tribunal has committed an error in fixing the negligence on the part of the fourth respondent instead of fifth respondent. According to the learned counsel appearing for the appellant, the Tribunal has failed to consider the independent evidence in the form of F.I.R. and final report filed by the police. Both the above contentions are without merits. It is well settled that the Tribunal has to decide the case independently based on the evidence let in before the Tribunal. In the present case, the respondents 1 to 3 have

examined P.W.2/eye-witness to prove their contention that the accident occurred only due to the rash and negligent driving by the rider of the motorcycle belonging to the fourth respondent, who dashed against the fifth respondent, who was waiting to cross the road. But the appellant has not examined the fourth respondent to prove their contention. It is well settled that evidence let in under oath has to be given preference than the statement made in F.I.R. The F.I.R., charge sheet and judgment of criminal Court can be considered by the Tribunal, but evidence let in before the Tribunal has to be considered to fix negligence. In the present case, the Tribunal considering the evidence on record, fixed the negligence on the part of fourth respondent by giving valid reasons. The amount awarded by the Tribunal is only just compensation and therefore, the findings of the Tribunal does not warrant any interference by this Court.

8. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw their respective shares along with interest and costs as apportioned by the Tribunal, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kj/krk

To

The Subordinate Judge,
Motor Accidents Claims Tribunal
Rasipuram.

+1cc to M/s.M.B.Gopalan Associates, Advocate sr.85570

C.M.A.No.2817 of 2018
and
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gmr(co)
nr 17/06/2019