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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.09.2017

DELIVERED ON: 18.01.2018

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

C.M.A (MD) No. 651 of 2015

and

M.P. (MD) No. 2 of 2015

and

C.M.P (MD) No. 8190 of 2017

The Branch Manager,
M/s. United India Insurance Co. Ltd.,
37/2, Mattappa Street, 2nd Floor,
Neel Complex, Tenkasi,
Tirunelveli District.

... Appellant/2nd Respondent

Vs.

1. Muthukrishnan

... 1st Respondent/Claimant

2. Soundarapandian

... 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.11.2012 made in M.C.O.P.No.307 of 2010 on the file of the Motor Accident Claims Tribunal (2nd Additional District Court), Tirunelveli.

For Appellant : Mr. B. Rajesh Saravanan

For R-1 : Mr. T. Selvakumaran

For R-2 : Mr. S. Alagusundar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 30.11.2012 made in M.C.O.P.No.307 of 2010 on the file of the Motor Accident Claims Tribunal (2nd Additional District Court), Tirunelveli.

2. It is a case of fatal accident, which took place on 11.12.2009 at about 9.50 a.m., on the Tirunelveli - Tenkasi Main Road near District Animal Husbandry.



3. It is the case of the claimant before the Tribunal that on the date of accident, when the deceased by name Muthu Padmavathi was riding a TVS Scooty bearing Registration No.TN 72 AD 7202 from Tirunelveli Vannarapettai to M.S.University at Abisekapatti, when she reached District Animal Husbandry Farm, next to Gandhi Nagar on Tirunelveli - Tenkasi main road, the deceased rode her two-wheeler on the left side of the road towards west and at that time, a Maruthi Omni bearing Registration No.TN 76 C 9821 belonging to the first respondent insured with the second respondent, which came from the opposite direction ie., from west to east in a rash and negligent manner, hit against the two-wheeler and caused the accident and as a result of which, the deceased was thrown out from the two-wheeler and she sustained multiple injuries and succumbed to the injuries.

4. The claimant, who is the younger brother of the deceased filed an application in M.C.O.P.No.307 of 2010 on the file of the Motor Accident Claims Tribunal (2nd Additional District Court), Tirunelveli.

5. Before the Tribunal, the claimant examined one witness as P.W.1 and marked eleven documents as Ex.P.1 to Ex.P.11. On the side of the Respondents, three witnesses were examined as R.Ws.1 to 3 and marked three documents as Exs.R.1 to 3.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the Maruthi Omni belonging to the first respondent/owner and insured with the second respondent/Insurance Company and therefore, the owner and insurer of the vehicle are jointly and severally liable to pay compensation to the claimant.

7. Against which, the appellant/Insurance Company has filed this present appeal challenging the liability as well as quantum.

8. The learned Counsel for the appellant/Insurance Company urges the following points and prays for interference of the award passed by the Tribunal:

(i) In the present case on hand, the deceased herself is a tort-feasor as she drove the vehicle without following the Traffic Rules and invited the accident;

(ii) The Driver of the second respondent did not possess any valid driving licence at the time of accident and as such, there is a violation of policy conditions and therefore, the Insurance Company is not liable to pay compensation;



(iii) the claimant/younger brother of the deceased, who is an adult person, is not an dependant and he is not entitled for any compensation; and

(iv) the Tribunal adopted wrong multiplier and awarded higher compensation.

9. Per contra, the learned counsel for the first respondent submitted that the Tribunal after carefully considering the evidence of P.W.1 and Ex.P1-F.I.R and Ex.P.4-Observation Mahazar held that the accident occurred due to the rash and negligent driving of the Driver of the Omni Van and therefore, the said finding does not warrant interference at the hands of this Court.

10. with regard to the aspect of entitlement of the claimant, who is the younger brother of the deceased, the learned counsel for the first respondent/claimant places reliance on the decision of the Honourable Division of this Court in **Anandha Lakshmi and others vs. Tamil Nadu State Transport Corporation (Villupuram Division - I)** reported in 2017 91) TN MAC 383 (DB), wherein at paragraph No.18, it is observed as follows:

"18.Courts have consistently held that what has been specifically excluded by legislation in a provision cannot be imported into the Section by decisions of Courts. By engrafting Section 166 of the Motor Vehicles Act, enabling all the Legal Representatives to make a claim, in contra-distinction to, Section 2(1)(d) of the Workmen's Compensation Act, which enables only the persons enumerated in the said Section to claim Compensation under Section 3 of the Workmen's Compensation Act, the intention of the legislature is clear and the definition, "Legal Representative" cannot be narrowed down to mean only "dependents", excluding brother."

and therefore, the claimant/younger brother of the deceased is entitled to get compensation.

11. With regard to quantum of compensation, the learned counsel for the first petitioner submitted that considering the age, avocation and also considering the plight of the claimant, the Tribunal awarded a just and reasonable compensation and therefore, in all aspects, the award of the Tribunal does not warrant interference and therefore, the appeal is liable to be dismissed.

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12. Heard the learned counsel appearing on both sides and perused the materials available on record.



13. Perusal of the award shows that even though the appellant/Insurance Company took a plea that the Driver of the vehicle did not possess valid driving licence at the time of accident, they did not prove the same by adducing proper evidence and therefore, the Insurance Company is liable to pay the compensation awarded by the Tribunal.

14. With regard to entitlement of the claimant, the judgment relied on by the learned counsel appearing for the first respondent/claimant in **nandha Lakshmi and others vs. Tamil Nadu State Transport Corporation (Villupuram Division - I)** reported in **2017 (1) TN MAC 383 (DB)**, is squarely applicable to the facts of the present case and therefore, the finding of the Tribunal awarding compensation to the claimant, who is the younger brother of the deceased does not warrant interference.

15. Further, a perusal of the award passed by the Tribunal clearly shows that the Tribunal has discussed in detail and found that the accident occurred only due to the rash and negligent driving of the Omni bus, belonging to the second respondent and insured with the appellant/Insurance Company and therefore, in all aspects, there is no infirmity in the award passed by the Tribunal and the same does not require interference at the hands of this Court.

16. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 30.11.2012 passed in M.C.O.P.No.307 of 2010 on the file of Motor Accident Claims Tribunal(II Additional District Court), Tirunelveli, is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the entire award amount with accrued interests and costs. No Costs. Consequently, connected Miscellaneous Petitions are closed.

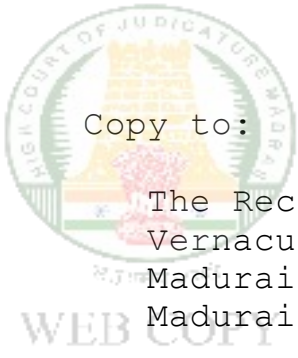
Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To,

The II Additional District Judge,
<https://hcservices.ecourts.gov.in/hcservices/>
Motor Accident Claims Tribunal,
Tirunelveli.



Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.T.Selvakumaran , Advocate in SR No. 42888

pm

AE/GT/SAR1/21.02.2018/5P/5C

JUDGMENT MADE IN
C.M.A (MD) No.651 of 2015
18.01.2018