



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1916 of 2019

The Divisional Manager,
The New India Assurance Co. Ltd.,
Vellore - 632 001.

... Appellant / 2nd Respondent

Vs.

1.P.Kanakammal

2.P.Arivazhagan

3.P.Deepa

4.P.Sathishkumar

5.L.V.Sekar

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.01.2018 made in M.C.O.P.No.815 of 2014 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.S.Manohar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 10.01.2018 made in M.C.O.P.No.815 of 2014 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.815 of 2014 on the file of Motor Accident Claims Tribunal, I Additional District and Sessions Court, Vellore. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Palani, who died in the accident that took place on 12.02.2009. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and



negligent driving by the driver of the lorry belonging to the 5th respondent and directed the appellant/Insurance Company to pay a sum of Rs.5,55,500/- as compensation to the respondents 1 to 4. Against the said award dated 10.01.2018 made in M.C.O.P.No.815 of 2014, granting compensation to the respondents 1 to 4, the appellant-Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in holding that the accident occurred due to rash and negligent driving by the driver of the lorry. On the other hand, the accident had occurred by an unknown two wheeler on 12.02.2009. FIR was registered after four days of the accident, in collusion with owner and driver of the lorry. All the respondents live in the place and in order to get compensation colluded together and lodged complaint after four days of accident to get compensation. In the Ex.R1-discharge summary, it has been stated that the accident occurred by unknown two wheeler on 12.02.2009. The respondents 1 to 4 have suppressed the discharge summary. The deceased under the influence of alcohol tried to cross the road and invited the accident and prayed for setting aside the award of the Tribunal.

4.Heard the learned counsel appearing for the appellant-Insurance Company and perused all the materials on record.

5. From the materials available on record, it is seen that it is the contention of the respondents 1 to 4 that the accident has occurred on 12.02.2009 at 11.45 a.m. due to rash and negligent driving by the driver of the lorry belonging to the 5th respondent. According to the respondents 1 to 4, the deceased was admitted in CMC Hospital, Vellore on 12.02.2009, thereafter admitted in Government Hospital and inspite of the treatment, he died on 15.02.2009. The complaint was given by the 2nd respondent after the death of his father. According to P.W.2 eyewitness, immediately after the accident, the deceased was taken to hospital in ambulance. In such circumstances, the delay in lodging the complaint is not fatal to the claim of the respondents 1 to 4. The appellant in the counter statement has stated that driver of the lorry drove the same cautiously and the accident has occurred only due to negligence on the part of the deceased while crossing the National highways. In the additional counter statement, the appellant has stated that the accident was caused by unknown two wheeler on 11.02.2009. In the grounds of appeal, the appellant has stated that the deceased, under the influence of alcohol tried to cross the National highways and invited the accident. The appellant has marked xerox copy of the discharge summary as Ex.R2 and contended that the accident has occurred on 11.02.2009 by unknown two wheeler.



The Tribunal has rejected Ex.R2 xerox copy of the discharge summary, on the ground that the appellant has failed to prove the said document by examining Doctor, who alleged to have issued the said discharge summary. The appellant has also not examined the driver of the lorry or any other eyewitness to substantiate their contention. The investigator examined as R.W.2 could not trace the two wheeler alleged to have caused the accident. The appellant has not filed any objection to the contents of the FIR and has not given any complaint against the respondents for alleged collusion. Considering the above materials in entirety, this Court is of the considered opinion that there is no perversity in the award warranting interference by this Court.

6.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.5,55,500/- awarded by the Tribunal as compensation to the respondents 1 to 4/claimants 1 to 4, along with interest and costs is confirmed. 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 six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.815 of 2014. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw their respective share of the award amount on the basis of the apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

mtl

Sub Assistant Registrar

To

1.The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Vellore.

2.The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.S.Manohar, Advocate, S.R.No.26741

C.M.A.No.1916 of 2019

(CO)
SSM(18/09/2019)