

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2267 of 2003

The Oriental Insurance Co.Ltd.
Thirussur.

... Appellant /3rd Respondent in Tribunal

Vs

1.Kandan

2.A.J.Ando

3.M/s.Easy Finance,
rep.by K.K.Francis (Managing Partner)
Ollarikan, Pullvazhi Post,
Thrissur District, Kerala.

... Respondents/Claimant and 1,2
Respondent in Tribunal

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 10.10.2002 made in MCOP No.806 of 1998 on the file of the Motor Accidents Claims Tribunal, Additional District Sessions Judge, Fast Track Court-1, Salem.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.P.Jagadeeswaran for R1
No appearance for R2 and R3

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.1,17,000/- towards compensation to the first respondent, due to the death of his mother, in a motor vehicle accident.

2.The case in brief, is as follows:

On 26.05.1997, at about 6.00 a.m., the deceased Karupayee was proceeding from her house towards a tea shop, in the extreme left side of the Salem-Sankagiri Road. When she reached near Neikarapatty Elanthaithoppu, the tempo van belonging to the

second respondent herein, bearing Reg.No.KL-8A/6611 came from behind in a rash and negligent manner and dashed against the deceased. Due to the said impact, the deceased sustained grievous injuries. She was admitted in the Government Mohan Kumaramangalam Medical College Hospital, Salem and she died in the hospital on the same day. The first respondent, who is the son of the deceased, filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,17,000/- interest at the rate of 9% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in holding that the appellant is liable to pay the compensation in spite of the fact that the first respondent has not proved the involvement of the tempo bearing Reg.No.KL-8A/6611. He has not disputed the quantum of compensation awarded by the Tribunal.

5.The learned counsel for the first respondent has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

7.It was argued on behalf of the Insurance Company before the Tribunal that as per the First Information Report, only the vehicle bearing Reg.No.TN-33/6128 was involved in the accident. The driver of the van was not traced. Even in the final report, the driver's name is not found. Hence, it cannot be said that the vehicle bearing Reg.No.KL-8A/6611 got involved in the accident, according to the Insurance Company. But the Tribunal has analysed the matter in detail and had given a finding that the owner of the vehicle bearing Reg.No.KL-8A/6611 was the second respondent and the same was mortgaged with the third respondent Finance Company. The Tribunal has observed that no steps have been taken by the Finance Company to find out as to which registration number the vehicle was carrying prior to Reg.No.KL-8A/6611, during the examination of the vehicle by the Motor Vehicle Inspector. It has also been observed that no documents have been filed to that effect. Considering the materials and evidence available on record, the Tribunal came to

the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the tempo van bearing Reg.No.KL-8A/6611, belonging to the second respondent, which factual finding this Court is not inclined to interfere. Since the quantum of compensation is not disputed, the same does not require any interference by this Court.

8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KM
To

The Motor Accidents Claims Tribunal
Additional District Sessions Judge, Fast Track Court-1,
Salem.

Copy to

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.S.Arunkumar, Advocate Sr.60326

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srg 05/12/2019