

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.419 of 2004
and
C.M.P.No.2062 of 2004

The New India Assurance Company Ltd.,
Coimbatore-2. .. Appellant/2nd Respondent

Vs.

1. Kaliappa Gounder
2. Velathal ..1 & 2 Respondents/Petitioners
3. Mylsamy ... 3rd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.09.2000 made in M.ACT.O.P.No.121 of 1995 on the file of the Motor Accident Claims Tribunal, Sub Judge, Udumalaipettai.

For Appellant : Mr.Krishnamurthy

For R1 & R2 : Mr.T.Murugamanickam

J U D G M E N T

This appeal is preferred by the appellant Insurance Company against the judgment and decree dated 18.09.2000 passed by the Motor Accident Claims Tribunal, Sub Judge, Udumalaipettai (for brevity, "the Tribunal"), in M.C.O.P.No.121 of 1995.

2.The respondents 1 and 2, who are the parents of one Radhakrishnan, filed a claim petition, seeking a sum of Rs.2,00,000/- as compensation for the death of the aforesaid Radhakrishnan, in an accident that took place on 26.11.1994, on account of the rash and negligent riding of the TVS-50 bearing Registration No.TN-37-E-7829 belonging to the third respondent and insured with the appellant insurance company. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,13,000/- with

interest at the rate of 12% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has disputed the liability fastened on the insurance company on the ground that the rider of the motor cycle did not possess a valid driving licence and hence, he was not covered by any risk, pursuant to the insurance of the vehicle, on the date of the accident. He has also disputed the quantum of compensation awarded by the Tribunal, contending that the same is excessive and exorbitant.

4.Heard both sides and perused the records.

5.Before the Tribunal, on the side of the respondents/claimants, the father of the deceased and the eye witness to the accident were examined as P.W.1 and P.W.2 and Exs.P1 to Ex.P5 documents were marked. On the side of the appellant/insurance company, the rider of the motor cycle was examined as R.W.1, however, no documentary evidence was adduced.

6.With regard to liability, according to the appellant insurance company, the rider of the motor cycle did not possess valid driving licence. However, the Tribunal, after examining Ex.P4 judgment of conviction delivered by the criminal court against the rider of the motor cycle, came to the conclusion that only because of the rash and negligent riding of the rider of the motor cycle, the accident had occurred, in which the deceased Radhakrishnan succumbed to the injuries. This Court is not inclined to interfere with the said finding rendered by the Tribunal.

7.As regards the quantum of compensation awarded by the Tribunal, P.W.1/father of the deceased, in his evidence, deposed that the deceased was aged about 19 years and was earning a sum of Rs.2,000/- per month as a Coolie in a Pipe Company. However, no proof was produced to substantiate the same. In the absence of any evidence, the Tribunal has determined the monthly income of the deceased at Rs.1,500/- and after deducting his personal expenses, calculated the monthly contribution to family at Rs.500/- and ultimately, determined the compensation under the head "loss of income" at Rs.96,000/- for 16 years, as per the Schedule to Motor Vehicles Act. Thereafter, the Tribunal has awarded Rs.5,000/- towards pain and suffering to each of the parents, Rs.2,000/- towards loss of clothes and Rs.5,000/- towards funeral expenses. Thus, the Tribunal has awarded the total compensation of Rs.1,13,000/- to the respondents/claimants, which, in the considered opinion of this Court, appears to be fair, just and reasonable, as the same has been quantified, after analysing the materials and evidence available on record. Hence, the same is hereby confirmed.

8.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant-Insurance Company is directed to deposit the entire award amount along with interest and costs, after deducting the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the respondents/claimants as apportioned by the Tribunal, through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

rk/av

To

1. Motor Accident Claims Tribunal,
Sub Court, Udumalaipettai.

Copy To : The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.Zeenath Begum, Advocate SR.No.49161

C.M.A.No.419 of 2004

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