IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2057 of 2006
and
M.P.No.1 of 2006

M/s.United India Insurance
Company Limited,
38, Anna Salai,
Chennai 2. ...Appellant/R2

Vs.

1.Sakunthala

2.Sasikala ... RR1 & 2/Petitioners

3.Kandasamy ...Respondents
(R3 - Exparte in the Lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.04.2005 made in M.C.O.P.No.723 of 2001 on the file of the Motor Accident Claims Tribunal (3rd Judge, Fast Track Court) at Chennai.

For Appellant : Mr.R.Ravichandran

For Respondents 1, 2 : Mr.R.Manoranjitham

For Respondent 3 : Died

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and Decree dated 27.04.2005 made in M.C.O.P.No.723 of 2001 on the file of the Motor Accident Claims Tribunal (3rd Judge, Fast Track Court) at Chennai.

2.The case in brief is as follows:

On 07.09.1998 at about 20.30 hours, the deceased Kanagamma was travelling as a pillion rider in the bicycle at Palleeswarar

Koil near New Gummidipoondi Junction Road. At that time, the lorry bearing Reg.No.TN-22-9295, belonging to the third respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and hit against the bicycle, which resulted in the instantaneous death of the deceased. The legal heirs of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.2,50,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a sum of Rs.1,94,000/- with 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 has submitted that the Tribunal has erred in awarding disproportionate compensation without appreciating the pleadings and the nature of the claim. Further, the learned counsel submitted that the Tribunal has failed to note that the claimants have not established the negligence on the part of the driver of the lorry by examining any eye witness or official witness and that mere production of First Information Report (Ex.P4) was not sufficient to fasten the liability. The learned counsel also submitted that at the time of accident, there was no insurance coverage for the vehicle and hence, the insurance company is not liable to pay any compensation to the claimants.

5.The learned counsel for the respondents 1 and 2 / claimants has submitted that the Tribunal has considered all the materials and evidence available on record and has rightly awarded the compensation which is just and reasonable, and hence the judgment of the Tribunal need not be interfered with by this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.Ex.P4-First Information Report discloses that the accident had occurred only due to the rash and negligent driving of the lorry driver. Further, it is seen that the Charge Sheet has been filed based on the First Information Report. P.W.1, the rider of the bicycle / daughter of the deceased, deposed before the Tribunal that when she was riding the bicycle in question, along with her mother (deceased) as pillion rider, the lorry in question came in a rash and negligent manner and dashed against the bicycle. Even though it was opposed by the Insurance Company before the Tribunal stating that the driver of the lorry was not negligent, 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 lorry. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

8.With regard to the contention of the insurance company that at the time of accident, there was no policy coverage for the lorry in question, the Tribunal has simply stated in the judgement that there was policy coverage on the date of accident, for which no reasons have been stated. Further, the insurance policy said to have been available covering the period during which the accident occurred, has not been marked before the Tribunal. In these circumstances, considering the materials and evidence available on record, it is clear that there was no policy coverage for the lorry in question at the relevant point of time. Hence, this Court deems it fit to grant liberty to the insurance company to recover the compensation from the owner of vehicle after making payment to the claimants. Since the owner of the vehicle has already died, the insurance company shall proceed against the legal heirs of the owner of the vehicle. Accordingly, the finding of the Tribunal on liability is modified.

9.Regarding the quantum of compensation awarded by the Tribunal, in the absence of the documentary proof thereof in respect of the income of the deceased earned by way of agricultural coolie, the Tribunal fixed the monthly income of the deceased at Rs.1,200/-, adopted the multiplier of 15, deducted 1/3rd of the amount towards personal expenses of the deceased and arrived at the compensation towards loss of income at Rs.1,44,000/-. Further, the Tribunal has awarded a sum of Rs.40,000/- towards loss of love and affection, Rs.5000/- towards Funeral Expenses and Rs.5000/- towards Mental Agony. The Tribunal has relied upon the exhibits, evidence of witnesses and all other aspects in a proper perspective and has awarded the above amounts under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards these heads are reasonable and justifiable and hence, the same are confirmed.

10.In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed. The appellant / Insurance Company is directed to deposit the award amount as ordered by the Tribunal 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 and thereafter recover the same from the legal heirs of the third respondent/owner of the vehicle in accordance with law. On such deposit being made, the respondents 1 and 2 are permitted to withdraw their respective share as apportioned by the Tribunal, on making proper application.

Sd/-
Assistant Registrar (MDU)

//True Copy//

Sub Assistant Registrar

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To

1.The III Judge,
The Motor Accidents Claims Tribunal,
Fast Track Court,
Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.R.Ravichandran, Advocate, S.R.No. 73926
+1cc to Mr.R.Manoranjitham, Advocate, S.R.No. 73798

C.M.A.No.2057 of 2006
and M.P.No.1 of 2006

EV(CO)
GN(09/09/2020)