



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.06.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2095 of 2006
and C.M.P.No.8842 of 2006

The Divisional Manager
The New India Assurance Co.Ltd.,
No.30, J.N.Road
Pondicherry.

... Appellant/2nd Respondent

Vs

1.Chitra

2.Gobikannan
Minor aged 9 years

3.Kasturi Rangan,
Minor aged 3 years

4.Dhinesh,
Minor aged 2 years

5.Saraswathi

(Minor respondents 2 to 4 represented
by their mother and guardian Mrs.Chitra,
the first respondent herein)

1 to 5 Respondent/Petitioners

6.Ganesan

...

6th Respondent/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 18.11.2003 made in OP No.1090 of
2002 on the file of the Motor Accidents Claims Tribunal and Fast
Track Court No.I, Tindivanam.

For Appellant : Mr.S.Ramalingam

JUDGMENT

This appeal is preferred by the Insurance Company against
the award of a sum of Rs.1,51,400/- towards compensation to the
respondents 1 to 5 / claimants due to the death of the first
respondent's husband in a motor vehicle accident.



2.The case in brief, is as follows:

On the fateful day, ie. on 20.06.1999 at about 16.30 hours, the husband of the first respondent by name Santhosh Kumar and his friend were travelling in a two-wheeler TVS Super XL bearing Reg.No. PY-01-L-9571 in the Villianur to Pathukannu Road, near Agaram. At that time, a person came suddenly in a bicycle across the road. In order to avoid collision, brake was applied and due to the said impact, both the husband of the first respondent and his friend fell on the road from the two-wheeler and they sustained grievous injuries. The husband of the first respondent was taken to the hospital and he died in the hospital. The legal heirs of the deceased filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal arrived at the total compensation at Rs.3,02,800/- but fixed only 50% liability on the appellant Insurance Company, holding that the claimants are entitled for only 50% since there was contributory negligence and accordingly directed the appellant Insurance Company to pay a sum of Rs.1,51,400/- with interest at the rate of 9% p.a., from the date of petition, to the claimants.

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 deceased was solely responsible for the accident and hence the Tribunal has erred in fastening 50% liability on the Insurance Company.

5.Heard the learned counsel for the appellant.

6.It is seen that the appeal was admitted way back in the year 2006 and till now the appellant Insurance Company has not taken any steps to serve papers to the other side. On 07.01.2019, fresh notice was ordered to the first and fifth respondents to their correct addresses. Since the sixth respondent died, the appellant was directed to take steps for the deceased sixth respondent.

7.The learned counsel for the appellant has not disputed the quantum of compensation awarded by the Tribunal. He is challenging only the negligence aspect. P.W.2-Archunan was examined on behalf of the claimants. He was the eye-witness to the occurrence. He deposed before the Tribunal that while he was drinking tea on that day at 4.00 p.m.in a tea shop which lies on the southern side from Akaram Road, he saw two persons coming in a TVS-XL motorbike from East to West direction, and at that time, since a cyclist came across suddenly, the rider of the motorbike applied sudden brake, due to which both of them fell



from the motorbike and sustained injuries. He also deposed that the pillion rider of the motorbike sustained head injuries and they were taken to the Pondicherry Government Hospital by an auto-rickshaw. He further deposed that there was negligence on the part of the driver of the motorbike. There was no evidence stating that the deceased was possessing driving licence. Since there were no clear evidence in that respect, and since both of them were not having driving licence, the Tribunal directed the Insurance Company to pay a sum of Rs.1,51,400/- with interest at the rate of 9% p.a., from the date of petition, being 50% liability. This Court is not inclined to interfere with such finding rendered by the Tribunal, as the same has been rendered on facts.

8.In the result, the Civil Miscellaneous Appeal is dismissed. 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, 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. The minor respondents would have attained majority by now. Hence, on such deposit, all the claimants are permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Judge,
Fast Track Court No.I,
Motor Accidents Claims Tribunal
Tindivanam.

Copy to:

The Section Officer,
VR Section, Madras High Court.

C.M.A.No.2095 of 2006
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kk(co)
nr 07/11/2019