

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2634 of 2007

and

M.P.No.1 of 2007

M/s. United India Insurance Company Limited
Super Bazaar,
Branch I
Trichy - 620006

Appellant / 3rd Respondent

Vs

1.Murugesan
2.Narasiammal ..Respondents 1&2/Claimants
3.M.Selvaraj
4.Kannan ...Respondents 3&4/Respondents 1 & 2

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09-02-2007 made in MCOP No.314 of 1999 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Mettur.

For Appellant : Ms.R.Sree Vidhya

For Respondents: No appearance for R1

R2 : Died

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award of a sum of Rs.2,00,000/- towards compensation to the first and second respondents herein, due to the death of their brother in an accident that occurred on 26.01.1997.

2.The case in brief, is as follows:

On 26.01.1997, when the petitioners' brother Kannan was travelling in his TVS 50 Moped from Omalur to Deevatipatti, near Chikkanampatti Colony in Omalur to Dharmapuri main Road, a lorry bearing Reg.No.TN 28 0102 came from Dharmapuri to Omalur, without blowing the horn at a high speed and knocked down the deceased and thereby caused the death of the said Kannan at the accident spot itself. Hence, the claimants/ the respondents 1 and 2 filed a Claim petition

before the Tribunal. On consideration of the evidence available on record, the Tribunal awarded a total compensation of Rs.2,00,000/- with interest at the rate of 9% per annum from the date of petition, to the claimants.

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

4. Heard the learned counsel for the appellant.

5. The learned counsel for the appellant submitted that the Tribunal has erred in awarding a 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 negligence on the part of the driver of the lorry by examining any occurrence witness or official witness and mere production of First Information Report and Charge sheet were not sufficient to fasten the liability. Yet another contention of the learned counsel for the appellant is that the claimants are not dependants of the deceased and in order to prove the same, no oral or documentary evidence has been produced before the Tribunal.

6. In order to verify the negligence on the part of the driver of the lorry, the examination of the award passed by the Tribunal is necessary. A perusal thereof would go to show that Ex.P.1 First Information Report discloses that the accident occurred only due to the rash and negligent driving of the lorry driver. Further, Charge sheet has been filed based on the First Information Report. Moreover, the driver of the lorry was convicted for the said accident by the Judicial Magistrate Court, Omalur in CC No.221 of 1998. Considering the evidence adduced as well as the documents produced, the Tribunal came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of lorry, which this Court is not inclined to interfere.

7. As far as the legal heirs of the deceased is concerned, the Tribunal has rightly taken into consideration the Legal Heir Certificate (Ex.P.6), which clearly shows that the deceased was the brother of the claimants, who are the actual legal heirs. Further, the evidence of PW 1 would reveal that the deceased was a bachelor at the time of accident and his parents also pre-deceased. Hence, there is no need to interfere with the decision taken by the Tribunal with regard to the dependants.

8. Regarding the quantum of compensation awarded by the Tribunal, the Tribunal by relying upon Ex.P7 Post Mortem Certificate of the deceased with regard to his age, adopted the multiplier of 16 and arrived at the conclusion that the

deceased was earning a monthly salary of Rs.1500/- and after deducting 1/3rd towards his personal expenses, awarded Rs.1,92,000/- towards loss of income to the claimants. Further, the Tribunal awarded a sum of Rs.5,000/- towards funeral expenses and Rs.3,000/- towards transport expenses, totalling to Rs.2,00,000/-. The amounts awarded by the Tribunal under the various heads are reasonable and hence the same are confirmed.

9. In such view of the matter, 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. On such deposit being made, the Tribunal is directed to transfer the deposited amount, as per the ratio of apportionment made by the Tribunal, to the Savings Bank Account of the claimants / Respondents 1 & 2 herein, through RTGS, within one week thereafter.

Sd/-

Assistant Registrar (AD-IV)

//True Copy//

Sub Assistant Registrar

vrn

To

The Motor Accident Claims Tribunal/Subordinate Judge
Mettur

+1cc to M/s.R.Sreevidhya, Advocate SR.52240

सत्यमेव जयते

C.M.A.No.2634 of 2007

and

M.P.No.1 of 2007

VD (CO)

CB(11/02/2020)

WEB COPY