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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

CIVIL MISCELLANEOUS APPEAL NO.3315 OF 2006
& M.P.NO.1 OF 2006

United India Insurance Co. Ltd.,
Ramakrishnaburam, Karur

... Appellant/
2nd Respondent

..vs..

1. Meena
2. Kalyani
3. Kavitha
4. Vadivu
5. Sumathi
6. Muniappan

... Respondents 1 to 5/Claimants

(R-3 declared as major and R-1 Meena discharged
from her guardianship, vide order of Court,
dated 12.03.2012 made in MP Nos.1 & 2
of 2012 in CMA No.3315/2006)

...6th Respondent/
3rd Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 17.11.2005 made in M.C.O.P.No.3 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Kallakurichi.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.A.G.Rajan, for R-1 to R-5
No Appearance, for R-6.

J U D G M E N T

Towards the death of the breadwinner in a road accident, a claim was made, that ended in an award, which is challenged by the Insurance Company in this Appeal.

2. At the outset, the learned counsel for the appellant / Insurance Company submitted that the Insurance Company is challenging only the negligence aspect.



3. In view of the said submission, this Court proceeds to deal with the negligent aspect alone.

4. The learned counsel for the appellant submitted that the Tribunal ought to have seen that in the absence of any independent eye witness, the FIR was the most reliable evidence on the manner of occurrence and on the issue of fault as between two vehicles.

5. The Tribunal on consideration of the materials placed before it has found that, apart from the allegations against the driver in the First Information Report, the averments in the First Information Report stand corroborated by the evidence of the P.W.1-Meena, and hence the liability is only on the part of the driver of the vehicle that is insured with the Insurance Company / appellant. Moreover, the Tribunal has also relied upon the dictum laid down by the Supreme Court and on a cumulative consideration has given a finding that the negligence is only against the driver of the vehicle that is insured with the Insurance Company.

6. A further perusal of the award of the Tribunal would go to show that the Tribunal has considered the principles of "no fault liability" and held that the owner of the vehicle was liable to pay the compensation for death even when the accident was not due to fault of the owner or driver. Eschewing the above, the Tribunal has also held that Section 163A of the MV Act is a special provision which eliminates pleading and proof with regard to wrongful act, neglect or default of the owner of the vehicle or any other person.

7. Further, on the side of the appellant herein, no effort has been taken-up to show that there was fault between two vehicles. In fact, nobody has been examined on the side of the appellant/Insurance Company. Therefore, the finding on liability is upheld and it cannot be challenged.

8. Since there is no challenge to the quantum of compensation awarded by the Tribunal, the compensation awarded at Rs.4,01,300/- shall stand confirmed. Also, the appeal was of the year 2006 and for the past 13 years, it is pending without any progress and the original petition was filed elsewhere in 1999. On this score also, this Court finds no reason to interfere with the quantum of compensation awarded by the Claims Tribunal.

9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant/Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded by the Claims Tribunal, less the amount



already deposited, if any, within a period of four 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 to the Savings Bank Accounts of the claimants 1, 3 to 5/ respondents 1, 3 to 5, through RTGS, one week thereafter, as per the ratio of apportionment made by the Claims Tribunal. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
Fast Track Court, Kallakurichi.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104.

+2cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.51994, 48807
+1cc to Mr.A.G.Rajan, Advocate, S.R.No.50956

C.M.A.No.3315 of 2006
& MP No.1 of 2006

KJI (CO)
CS/03/01/2020