

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3994 of 2005
and C.M.P.No.19635 of 2005

M/s.United India Insurance Company Limited
No.73-C, MTH Road,
Ambattur, Chennai.

...Appellant/4th Respondent

Vs

1.S.Hamja Maricar
2.H.Noorul Huda
3.H.Nasarat Begum
4.Amudhalakshmi
5.The National Insurance Company Limited,
No.2A Thallakulam Branch
Thirumakkulam North Street,
Thallakulam.

6.Ronald ...Respondents 1 to 3/Petitioners 1 to 3/
Respondents 1 to 3

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 18.04.2005 made in MACTOP No.97 of 2003 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.1), Tindivanam.

For Appellant : Mr.J.Raja Kalifulla

For Respondents : No appearance for R1, R2
and R5

JUDGMENT

This appeal has been filed by the Insurance Company against the judgment and decree dated 18.04.2005 made in MACTOP No.97 of 2003 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.1), Tindivanam.

2.The facts of the case would run thus:

On 03.09.2001, the fateful day, one Syed Thammimul Iyyub along with his friends, returned to Chennai after attending their friend's marriage at Thirukkanur Village. The said Iyyub

was travelling as pillion rider in the motorcycle bearing Reg.No.TN-05-D-0958. When the vehicle reached near Kooteripattu Cross Road, the lorry bearing Reg.No.TN-65-A-5437, belonging to the fourth respondent, came with great speed without following the traffic rules and dashed against the motorcycle. Due to the said impact, the said Iyyub sustained grievous injuries and died. The legal heirs of the deceased filed a claim petition before the Tribunal. The Tribunal awarded a compensation of Rs.5,56,000/- with interest at 9% per annum from the date of petition. The said amount has been directed to be paid to the first and second respondents herein 50% by the respondents 4 and 5 and another 50% by the appellant and the sixth respondent herein, being the insurer and owner of the two-wheeler.

3.Challenging the 50% liability, 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 concluding that both the vehicles had contributed to the accident. He submitted that the lorry alone was responsible for the accident and hence there is no liability on the part of the appellant Insurance Company to pay compensation to the claimants.

5.There is no representation on behalf of the respondents 1, 2 and 5.

6.Heard the learned counsel for the appellant.

7.The aspect with regard to the negligence on the part of both the vehicles has been analysed by the Tribunal. According to the evidence of P.W.2, the accident had occurred due to the rash and negligent driving of the driver of the lorry, but it is a cross road and the sixth respondent who drove the two-wheeler also sustained injuries. Considering the complaint and the counter-complaint, the Tribunal observed that there exists a doubt as to whether there was negligence on the part of the sixth respondent also. Further, the sixth respondent has not been examined, or any sketch has been filed to prove the mode of accident. Hence the Tribunal came to the conclusion that both the vehicles are responsible for the accident. This Court is not inclined to interfere with the said finding. With regard to quantum, the Tribunal has adopted the correct multiplier and arrived at the loss of income at Rs.5,44,000/-. The amounts awarded towards other heads are also reasonable.

8.In view of the above stated circumstances, the Civil Miscellaneous Appeal is dismissed, confirming the impugned judgment and decree passed by the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

9.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, the claimants are permitted to withdraw the same, on making proper application before the Tribunal.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

KM
To

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

2.The Section Officer,
VR Section, Madras High Court.

+1 Cc to Mr.P. Mani, Advocate sr 45498.

+1 CC to Mr.J.Raja Kalifulla, Advocate sr 45533.

C.M.A.No.3994 of 2005
C.M.P.No.19635 of 2005

RV(CO)
SP(16/10/2019)

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