

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.1035 of 2009

and M.P.No.1 of 2009

M/s.Royal Sundaram Alliance
Insurance Co. Ltd.,
Sundaram Tower,
45, Whites Road,
Chennai - 14.

.... Appellant/2nd Respondent

...vs..

1. Rani
2. Rajina
3. Minor Suguna
4. Minor Arumugam
5. Chinnappa Naidu
6. Govindammal

.... Respondents 1 to 6/Petitioners

(Minors represented by the
First Respondent herein)

7. M.Duraisamy

...7th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree, dated 29.08.2008 made in M.C.O.P.No.780 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Krishnagiri.

For Appellant :Mrs. R.Sreevidya

For Respondents :Mr. Mukund R.Pandiyan for R1 - R6
R7 - exparte

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company, challenging the findings on negligence as well as the quantum of compensation awarded by the Claims Tribunal in M.C.O.P.No.780 of 2005.

2.The case of the claimants is that on 22.05.2003, at about 6.00 p.m., the deceased Shanmugam was proceeding in his TVS-50 moped bearing Reg.No.TCD-9930 on the Uthangarai - Tirupattur Main Road. When he was nearing Arasamarathupallam towards Pandavar Nagar, the TVS-Suzuki Max-100 two-wheeler bearing Reg.No.TN-29-M-4650 belonging to the seventh

respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the TVS-50 two-wheeler. Due to the said impact, the rider of the moped fell down on the road and sustained fatal injuries. He was taken to the Government Hospital, Dharmapuri. But in spite of treatment, he succumbed to the injuries in the hospital. The legal representatives of the deceased filed a claim petition before the Claims Tribunal claiming a sum of Rs.8,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has held that the seventh respondent and the appellant herein are liable to compensate the claimants and arrived at a sum of Rs.5,13,000/- as total compensation.

3.Challenging the same, the appellant Insurance Company is before this Court, with this appeal.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in coming to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the TVS-Suzuki two-wheeler. He further submitted that the Tribunal has failed to note that the rider of the two-wheeler which was insured with the appellant was not having valid driving licence and the same is evident even from the claim petition. He further submitted that in any event, the award of the Tribunal is disproportionate and it needs significant reduction.

5.Per contra, the learned counsel for the claimants/respondents 1 to 6 has submitted that the findings on negligence as well as on quantum are based on settled principles of law and that the Tribunal has analysed the materials and evidence in a threadbare manner and awarded the just compensation, which does not require any interference by this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 6 / claimants and perused the materials available on record carefully and meticulously.

7.It was put forth before the Tribunal on the side of the Insurance Company that both the deceased as well as the rider of the TVS-Suzuki two-wheeler were not possessing the valid driving licence to drive the vehicle. Since the Investigation Officer has not been appointed by the Government and he has been appointed only by the Insurance Company and further the contents of the report showed that the officer came to the conclusion only based on the police records, the Tribunal observed that investigation report alone is not sufficient to decide this aspect. Further, it is seen that Exs.R1 to R4 which are the documents marked on the side of the Insurance Company, do not sufficiently establish the contention of the Insurance Company about the non-possession of valid driving

licence. Further, it is seen that the Insurance Company has not taken proper steps to establish this aspect through oral and documentary evidence. In these circumstances, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the two-wheeler insured with the appellant Insurance Company, which finding this Court is not inclined to interfere.

8.As far as the quantum of compensation, the Tribunal has fixed the monthly income of the deceased at Rs.3,000/- notionally (against the claim of Rs.6,000/- per month earned by way of flower business and cattle broker), deducted 1/3rd of the amount towards personal expenses of the deceased, adopted 16 multiplier and arrived at the loss of dependency at Rs.3,84,000/-. Further the Tribunal has awarded sums of Rs.2,000/-, Rs.30,000/-, Rs.75,000/- Rs.20,000/- and Rs.2,000/- towards transport expenses, loss of consortium, loss of love and affection to the children of the deceased, loss of love and affection to the parents of the deceased and funeral expenses respectively. The Tribunal has rightly considered the materials and evidence, correctly assessed the income of the deceased, adopted the correct multiplier and arrived at the compensation towards loss of dependency. The amounts awarded by the Tribunal towards other heads are also very reasonable and hence the same are confirmed.

9.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 entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. The minor respondents 3 and 4 would have attained majority by now. Hence, on such deposit being made, the respondents 1 to 6 / claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, on making proper application.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb / srk

To

1. Motor Accident Claims Tribunal,
Additional District Judge, Krishnagiri.

2. The Section Officer, V.R.Section,
Madras High Court, Chennai 104.

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No. 71545

+1cc to Mr.Mukund R.Pandian, Advocate, S.R.No. 70056

C.M.A.No.1035 of 2009
and M.P.No.1 of 2009

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GN(01/09/2020)



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