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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.754 of 2005

- | | |
|--|----------------------------|
| 1. Kannusamy | |
| 2. Pappa | .. Appellants/Petitioners |
| | Vs. |
| 1. Ayyasamy | |
| 2. National Insurance Co., Ltd., | |
| T.V.C.Chetty Street, Erode. | |
| 3. Sekar | |
| 4. Oriental Insurance Company limited, | |
| Chennai. | |
| (R3 and R4 are given up | |
| before the Tribunal) | .. Respondents/Respondents |

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.04.1999 made in MCOP.169 of 1996 on the file of the Motor Accidents Claims Tribunal, Sub Court, Viruthachalam.

For Appellants : Mr.R.Sunil Kumar

For R2 : Mr.S.Arun Kumar

R1 : Died vide order dated 14.07.2020

R2 & R3 : Given up

J U D G M E N T

The claimants have come up with the present appeal seeking enhancement of compensation awarded by the Tribunal vide Judgment and Decree dated 20.04.1999 made in MCOP.No.169 of 1996 on the file of the Motor Accidents Claims Tribunal, Viruthachalam.

2.The case in brief, is as follows:

On the fateful day, ie. on 14.11.1988, at about 8.15 pm, the deceased Kabeerdoss was riding the motorcycle bearing registration No.TSF 2492 belonging to the first respondent and



insured with the second respondent insurance company. One Rajendran was travelling in the motorcycle as pillion rider. They were proceeding on the left side of the road, near Sainik Traffic Island. At that time, the van bearing Regn.No.TDQ 3191 came from the opposite direction in a rash and negligent manner and dashed against the motorcycle. As a result of the same, the deceased sustained fatal injuries and he later on, died in the hospital. His father and mother, being the surviving legal heirs, filed a claim petition seeking compensation of Rs.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.50,000/- with interest at the rate of 7.5% per annum from the date of petition to the claimants.

3. Being not satisfied with the quantum of compensation, the claimants have preferred the appeal seeking enhancement of compensation awarded by the Tribunal.

4. The learned counsel for the appellants/claimants has submitted that the Tribunal has erred in holding that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle. It is also submitted that the compensation awarded by the Tribunal at Rs.50,000/- under 'no fault liability' is meagre and hence, the same requires enhancement.

5. Per contra, the learned counsel for the second respondent/insurance company submitted that the Tribunal has correctly considered the materials and evidence available on record and passed the impugned judgment and hence, the same does not require any interference by this Court.

6. Heard the learned counsel appearing for the appellants and learned counsel appearing for the second respondent and perused the materials available on record carefully and meticulously.

7. Considering the manner in which the accident took place, the Tribunal has observed that the motorcycle which was ridden by the deceased came from a branch road to the main road; that had the deceased been careful in stopping the motorcycle and thereafter proceeded to the main road, the accident would have been averted; that only because the deceased had turned the vehicle to the main road at high speed, it dashed against the van and the same was evident from Ex.P1-First Information Report; that the said view has also been fortified by the Investigating Officer appointed by the insurance company. Further, there was no eyewitness to the occurrence. It is also the admitted fact that the deceased was not having the valid driving licence to ride the vehicle. Considering the evidence and materials available on record and also the manner of the



accident, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent riding of the deceased, which factual finding this Court is not inclined to interfere. Accordingly, the Tribunal has correctly awarded Rs.50,000/- as compensation under no fault liability, since the factum of accident was proved and there was a policy coverage for the motorcycle in question.

8.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The second respondent/Insurance Company is directed to deposit the compensation amount with interest and costs, awarded by the 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 appellants/claimants are permitted to withdraw their respective shares on making proper application before the Tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Sub Court, Viruthachalam.

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

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 73336

C.M.A.No.754 of 2005

BP(CO)
GN(12/08/2021)