

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1324 of 2009

and

M.P.No.1 of 2009

M/s.ICICI Lombard General Insurance Co. Ltd.,
Tiruppur Office,
44/3, C.P.Road,
R.S.Puram, Coimbatore. ... Appellant/2nd Respondent

Vs.

1.K.Thiruppathal
2.K.Karthick
3.Swamyiathal ... Respondents 1 to 3/Petitioner
4.R.Muthukumar ... 4th Respondent/1st Respondent
(R4 set exparte in the Lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.09.2008 made in M.C.O.P.No.269 of 2008 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Dharapuram.

For Appellant :Mrs.R.Sreevidya

For Respondents : No Appearance (for R1 to R3)
R4 - Exparte

JUDGMENT

The appellant insurance company is challenging the judgment and decree dated 25.9.2008 made in M.C.O.P.No.269 of 2008 by the Motor Accidents Claim Tribunal (Subordinate Judge), Dharapuram.

2. Respondents 1 to 3 are the claimants, who are wife, son and mother of the deceased respectively. The fourth respondent is the owner of the lorry which dashed against the TVS-50 XL of the deceased. The appellant is the insurance company with which the lorry was registered.

3. It is stated that on 1.3.2008 at about 1.15 PM, when the deceased was standing with TVS-50 XL bearing registration No.TN 33 C 2793 on the Northern edge of the west-east Muthur to Kodumudi Main Road, near Chinnamuthur piruivu, Muthur, the driver of the lorry bearing registration No.TN 09 D 7922, which was driven in a rash and negligent manner, dashed against the TVS-50 XL with great force and as a result, the deceased was thrown off and sustained grievous injuries and the injured died on his way to the hospital. The respondents 1 to 3/claimants filed the claim petition claiming compensation of Rs.10,00,000/-.

4. The appellant/insurance company filed a counter statement before the Tribunal refuting the claim petition, inter alia, pleading that there was no valid policy in force at the time of accident and that the driver of the lorry was not holding a valid licence at the time of accident. That apart, the insurance company also disputed the age, occupation and income of the deceased and pleaded that the claim made by respondents 1 to 3/claimants is, in any event, exorbitant.

5. The Tribunal, on consideration of the oral and documentary evidence placed before it, by the judgment impugned, awarded compensation to the tune of Rs.6,80,000/- to respondents 1 to 3/claimants.

6. Calling in question the said judgment and decree, the present appeal is filed by the insurance company.

7. The learned counsel appearing for the appellant/insurance company contended that the deceased was guilty of contributory negligence and, therefore, the Tribunal ought to have apportioned the liability.

8. He further contended that the Tribunal awarded compensation disproportionately adopting higher multiplier and in any event the contribution of the Tribunal fixed at Rs.4,400/- per month is unsustainable.

9. I heard Mrs.R.Sreevidya, learned counsel for the appellant and perused the entire materials available on record. There is no representation on behalf of the respondents 1 to 3/claimants.

10. This Court heard the learned counsel for the appellant/ insurance company and perused the documents available on record.

11. The case of the respondents 1 to 3/claimants is that on 1.3.2008 at about 1.15 P.M., the deceased was standing with his TVS-to motorcycle bearing registration No.TN-33 C 2793 on

the northern edge of the west-east Muthur to Kodumudi main road near Chinnamuthur pirivu, Muthur. At that time, a lorry bearing registration No.TN-09 D 7922 driven by its driver in a rash and negligent manner without sounding horn dashed against the deceased. Due to the impact, the deceased was thrown out and had sustained grievous injuries all over the body and died on the way to the hospital. According to the respondents 1 to 3, the fourth respondent herein is the owner and the the appellant is the insurer of the lorry. Since the accident occurred due to rash and negligent driving of the driver of the first respondent, who is the owner and the appellant, who is insurer of the lorry are liable to pay the compensation for the death of deceased.

12. To prove the negligence on the part of the driver of the lorry, P.W.1, wife of the deceased has produced Ex.P1-FIR registered against the driver of the lorry. In her evidence, P.W.1 deposed that the accident occurred due to rash and negligent driving of the driver of the lorry. The eye-witness to the accident was examined as P.W.2, who had categorically deposed that the accident occurred due to rash and negligent driving of the driver of the lorry.

13. Though the appellant/insurance company contended that the accident occurred not only due to rash and negligent driving of the driver of the lorry, the negligence is also on the part of the deceased. In fact, to prove that the deceased also contributed to the accident, the appellant has not produced any materials. No oral and documentary evidence was adduced on the side of the appellant/ insurance company.

14. Finding that a case in Crime No.118 of 2008 was registered against the driver and also charge sheet has been laid against the driver of the offending lorry, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the fourth respondent. Since the appellant being the insurer of the offending lorry, the Tribunal directed the appellant to pay the compensation. Since the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the lorry is based on documentary evidence, this Court confirm the said finding. As stated supra, to establish the contributory negligence on the part of the deceased, nothing has been produced by the appellant. Therefore, the Tribunal was right in fastening the liability on the driver of the fourth respondent and also right in directing the appellant to pay the compensation for the death of deceased.

15. As far as the quantum of compensation awarded by the Tribunal is concerned, the learned counsel for the appellant

contended that the Tribunal has failed to note that the source of income is still available and the second respondent is running the shop and what is lost is only the loss of services of the deceased and therefore, holding the entire earnings at Rs.5,500/- per month and contribution at Rs.4,400/- per month is factually and legally unsustainable. Admittedly, in support of the said contention, the appellant has not produced any piece of material.

16. According to the respondents 1 to 3/claimants, at the time of accident, the deceased was running a provisional shop and cycle shop and was earning Rs.11,000/- per month. In her evidence, P.W.1 deposed that her husband was running a provisional shop and cycle shop and was earning Rs.11,000/- per month. To prove the monthly income of the deceased, the claimants have not produced any documents. In the absence of proof, the Tribunal has fixed the monthly income of the deceased at Rs.5,500/-. To disprove the version of P.W.1, the appellant has not produced any piece of evidence. Considering the age of deceased and also the avocation, the Tribunal was right in fixing the monthly income of the deceased at Rs.5,500/-. Deducting one-third towards personal expenses and adopting multiplier "15", the Tribunal calculated the loss of dependency at Rs.6,60,000/-. This Court is of the view that an amount of Rs.6,60,000/- awarded by the Tribunal towards loss of dependency is reasonable and the same is maintained.

17. As far as conventional damages are concerned, the Tribunal awarded Rs.5,000/- each towards transport charges; funeral expenses; loss of love and affection and loss of consortium. Since the amounts awarded under the aforesaid heads are reasonable, this Court is inclined to maintain the same. This Court is of the view that the total compensation of Rs.6,80,000/- awarded by the Tribunal is just and reasonable and therefore, the same is maintained. No valid grounds have been made out to interfere with the award passed by the Tribunal. Hence, the appeal preferred by the appellant is liable to be dismissed.

18. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp Cell)

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Sub Assistant Registrar

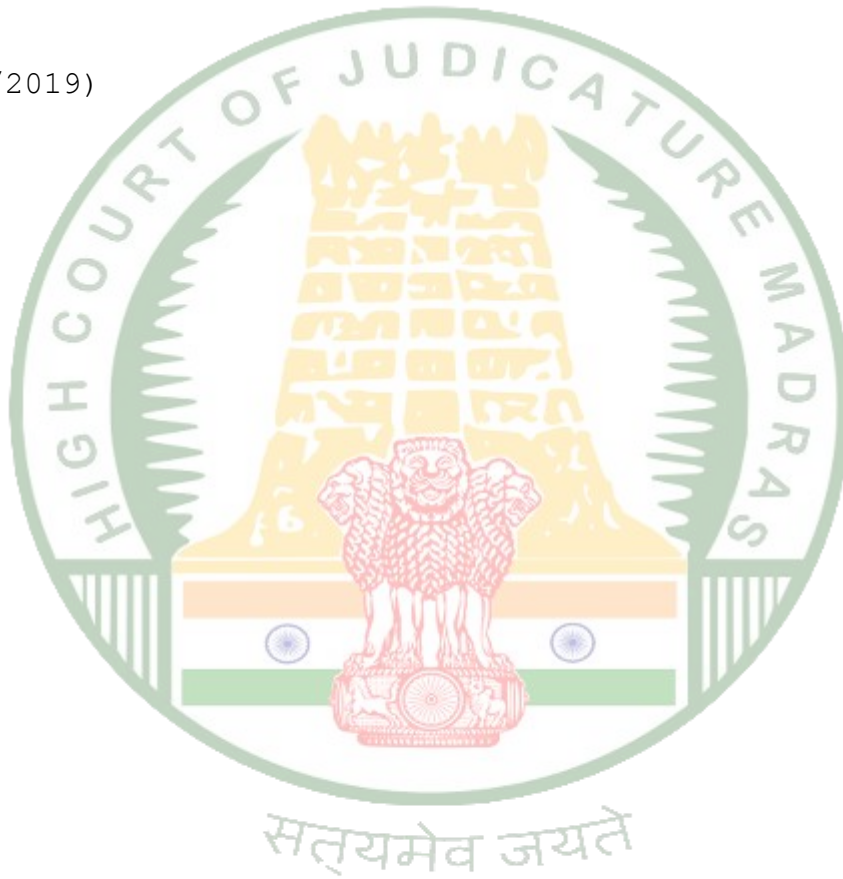
vs

To
The Subordinate Judge
The Motor Accident Claims Tribunal
at Dharapuram.

+1cc to Mr.R.Sreevidhya, Advocate SR.No.17796

C.M.A.No.1324 of 2009
and
M.P.No.1 of 2009

VSN II (CO)
GMY (28/05/2019)



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