IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3594 of 2008

B.Radhakrishnan ...Appellant / 1st Respondent

Vs

1. J.Kanniammal
2. P.Subramani
3. P.Kannan
4. P.Ramesh
5. P.Tharani
6. R.Rajeshwari
7. United India Insurance Co Ltd
   No.445, Kandasami Street
   Ranipet
   Vellore District ...Respondents /Petitioners 1-6 and 2nd Respondent

Prayer: Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 05.02.2008 made in MCOP No.196 of 2004 on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Ranipet, Vellore District.

For Appellant : Mr.N.S.Sivakumar

For 7th Respondent : Mr.S.J.Jagades

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellant/1st respondent against the award passed in MCOP No.196 of 2004.

2.The case in brief is as follows:-

On 01.05.2004, at about 8.30 pm, while the deceased Pichandi was returning home in his Bicycle in Walajapet Sholinghur Road, near Saibaba Temple, a mini lorry bearing Reg.No.TN 23 Q 3966, came in the opposite direction in a rash and negligent manner, dashed against his bicycle, due to which, he was thrown out of the said vehicle and the front wheel of the lorry ran over on his head and he died on the spot itself. Stating that the driver of the lorry is solely responsible for the accident, the legal heirs of the deceased have filed a claim petition before the Tribunal. On a consideration of the evidence available on record, the Tribunal has awarded a sum of Rs.2,43,000/- as total compensation.

3. Aggrieved against the award passed by the Tribunal, the appellant / 1st respondent has preferred this Civil Miscellaneous Appeal.

4. Heard both sides.

5. The learned counsel for the appellant submitted that the award and decree passed by the Claims Tribunal in holding that the insurer / 2nd respondent to satisfy the decree first and to reimburse the same from the owner of the vehicle/ appellant herein is unsustainable both on law and facts; the claims Tribunal had erred in holding that merely the driver of vehicle/appellant herein, having been in possession of licence for light motor vehicles and drove medium motor vehicle, at the time of accident amounts to breach of policy condition. The learned counsel further submitted that the Claims Tribunal had failed to consider the fact that the deceased died in the accident, because of the unforeseen or intervening cause, which is having no nexus with the driver in not possessing requisite type of licence; the compensation arrived at by the Claims Tribunal under various heads of claims are highly excessive and hence liable to be re-determined in this appeal on merits.

6. Per contra, the learned counsel for the 7th respondent/Insurance Company would contend that the Tribunal has rightly held that since the driver of the lorry was not in possession of proper driving licence to drive the said lorry, pay and recovery has been ordered. Hence, there is no need to interfere with the award passed by the Tribunal.

7. On a perusal of the award passed by the Tribunal, it is evident that the Tribunal has taken note of the evidence of PW 1, wherein, he had deposed that due to the rash and negligent driving of the driver of the lorry, the accident had happened. Further, a criminal case was initiated against the driver of the

lorry, which was ended in conviction and he has also paid the fine amount. The Tribunal has also taken into consideration Ex.P.1, First Information Report, Ex.P.2 Motor Vehicle Inspector's Report, Ex.P.4, Copy of Judgment as well as the eye witness (PW 1) and has fastened the liability on the insurer of the said lorry with liberty to recover it from the owner of the lorry. This Court is of the opinion that the findings on negligence rendered by the Tribunal are based on evidence and documents adduced and hence no interference is required.

8. As far as the contention raised by the learned counsel for the appellant with regard to pay and recovery issue is concerned, the Tribunal has discussed in paragraph 10 of the award about the nature of Driving licence, the validity of the same and the evidence of R.Ws.1 and 2. Moreover, RW.1, the driver of the lorry has deposed that, the accident had happened on 01.05.2004 and at the time of accident, he had valid driving licence for driving Transport vehicles and its validity was upto 10.12.2009. He has also produced the copy of Driving license before the Tribunal. Whereas RW.2, Motor Vehicle Inspector has deposed to the effect that the driver of the lorry was issued with the driving licence for light motor vehicles only and not for medium or heavy motor vehicles. Since the offending vehicle belongs to the category of medium motor vehicle and by holding the license for light motor vehicle, the driver of the lorry could not drive such a vehicle having weight of 8210 kgs. From the evidence of RW2 and documents Exs.R.1 and 2, it is crystal clear that by violating the policy conditions, the owner of the vehicle allowed the driver to drive the said vehicle without having valid driving licence. The Tribunal, by relying upon the decisions reported in "2004(1) T.N.M.A.C 142 (1B), 2004 (1) T.N.M.A.C 104," and has come to the conclusion that the insurer of the vehicle has to pay the compensation to the claimants at first, and later recover the same from the owner of the vehicle. Such a finding rendered by the Tribunal perfectly matches with the preponderance of probability, which is a sine qua non for a civil liability. Thus, this Court is not inclined to interfere with the decision taken by the Tribunal regarding the liability.

9. As far as the quantum of compensation is concerned, the Tribunal by relying upon the evidence of PW 1 and Ex.P.5, Legal heir certificate, taken the age of the deceased as 45, fixed the notional income as Rs.2,000/- per month, (as there is no document to prove the avocation and income of the deceased) applied the multiplier 13 and arrived at Rs.2,08,000/- towards loss of income to the claimants. Further, the Tribunal has awarded a sum of Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium, Rs.20,000/- towards loss of love and affection totalling to Rs.2,43,000/-. The yardstick adopted by the Tribunal in arriving at the quantum is based on

settled principles of law and second schedule of the Motor Vehicles Act, which in the opinion of this Court is nothing but just.

10. In such view of the matter, the Civil Miscellaneous Appeal is dismissed. No costs. The 7th respondent /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 four weeks from the date of receipt of a copy of this judgment with liberty to recover the same from the owner of the vehicle B.Radhakrishnan / appellant herein. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Accounts of the claimants / Respondents 1 to 6 herein, through RTGS, within one week thereafter, as per the ratio of apportionment made by the Tribunal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal/ Subordinate Court,
Ranipet, Vellore District

Copy to

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

+1cc to Mr.N.S.Sivakumar, Advocate Sr.62150

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srg 08/06/2020