



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.12.2019
C O R A M
THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

WEB COPY

C.M.A.No.1588 of 2009

New India Assurance Co. Ltd.,
Kutchery Road,
Mylapore, Chennai - 600004.

...Appellant/2nd Respondent

Vs

T.S.Krishnamoorthy (Deceased)

1. S.P.Lalitha
2. SKLS Company,
148, Bypass Road,
Red Hills, Chennai - 600052.
3. K.Vijayalakshmi
4. K.Easwari
5. K.Nagarajan

(Cause title accepted vide order
dated 02.02.2009 made in

MP.No.1/09 in CMA.SR.No.70630/08) ...Respondents/Respondents 1&3
and LRs of the deceased
Claimant

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 against the Judgement and Decree dated
20.12.2007 made in MCOP.No.3098 of 2001 on the file of the Motor
Accident Claims Tribunal (II Judge, Court of Small Causes) at
Chennai.

For Appellant : Mrs.R.Sree Vidhya

For Respondents: Mr.T.N.Rajagopalan
for R1 and R3 to R5

R2 - ex-parte



J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 20.12.2007 made in MCOP.No.3098 of 2001 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

2.The appellant herein is New India Assurance Company, who is the 2nd respondent in M.C.O.P.No.3098 of 2001, on the file of the Motor Accidents Claims Tribunal, (II Judge, Court of Small Causes) at Chennai. The deceased respondent filed the said claim petition, claiming a sum of Rs.21,25,000/- as compensation for the injuries that he had sustained during the accident that took place on 16.07.1998.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by both the drivers of the Maruti Van bearing Registration No.TN-01-E-9475 and the second respondent's Lorry bearing Registration No.AP-26-T-1278 and directed the appellant-Insurance Company and the second respondent herein, who was set ex-parte, to pay a sum of Rs.5,15,165/- as compensation to the deceased petitioner equally with 7.5%. Challenging the said award dated 20.12.2007 made in M.C.O.P.No.3098 of 2001, the appellant-Insurance Company has come out with the present appeal.

4.The learned counsel for the appellant submitted that the learned Tribunal has erred in holding that the appellant/Insurance Company is liable to pay the compensation, after giving a finding that the claimant, who was driving the Maruti Van, was also guilty of negligence equally. The learned counsel also submitted that the claimant, who was the husband of the owner of the vehicle, was not entitled to claim compensation under law of Torts from the Insurer of the Van driven by him. As the owner of the vehicle failed in maintaining the claim petition against the owner and insurer of the lorry, who is the third party, he is not entitled to maintain the claim against the insurer of the vehicle driven by him, since he was a Tort-Feasor and he was not a workman under the owner of the Van and prayed for setting aside the award of the Tribunal.

5.The learned counsel appearing for the respondents 1, 3 to 5 contended that the Tribunal considering the materials on record has awarded reasonable compensation and prayed for dismissal of the appeal.



6. Heard the learned counsels appearing for the appellant as well as the respondents and perused the materials available on record.

7. From the materials available on record, it is seen that the deceased respondent has deposed the manner of accident by which the accident took

place. It clearly shows that if both the drivers have carefully driven the vehicles, the accident would not have taken place. The Tribunal considering the entire materials on record held that the accident occurred due to the rash and negligent driving of both drivers. R.W.1-Executive Officer of the appellant in his cross examination has admitted that the driver who possesses valid license can drive the vehicle as per policy condition and hence, Insurance Company is liable to pay compensation for the negligence of the driver on behalf of owner of the vehicle. The appellant has not let in any evidence to disprove the contention of the respondents. Considering the nature of injuries, the Tribunal has awarded the compensation which is not excessive. There is no error warranting interference by this Court.

8. In the result, the Civil Miscellaneous Appeal is dismissed and award of the Tribunal is confirmed. Both the 2nd respondent herein as well as the appellant-Insurance Company is directed to deposit the entire amount awarded by the Tribunal, equally, along with interest and cost, within a period of 6 weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the 1st respondent is entitled for a sum of Rs.1,55,165/- and the respondents 3 to 5, who are the legal heirs of the deceased respondent, are entitled for a sum of Rs.1,20,000/- each along with their proportionate interest. The Tribunal is directed to transfer the said sums to the savings bank accounts of the respective respondents through RTGS, within a period of 1 week thereafter, upon providing proof of their legal heirship certificate. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

hvk



To

The Motor Accident Claims Tribunal
(II Judge, Court of Small Causes),
Chennai.

2.The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.R.Sree vidhya Advocate sr102572
+1 cc to M/s.T.N.Rajagopalan Advocate sr101684

C.M.A.No.1588 of 2009

rr(co)
aa23/07/2020