

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.1799 OF 2009

AND

M.P.NO.1 OF 2009

United India Insurance Co.Ltd.,
Divisional Office,
40/439, Railway Station Road,
Kurnool-518 001.
Andhra Pradesh.
Policy No.051100/31/02/01625
Period from 20.11.2002 to 19.11.2003

.. Appellant/2nd Respondent

Vs.

1.S.Ammani .. 1st Respondent/1st Petitioner
2.S.Shanmugam .. 2nd Respondent/2nd Petitioner
3.Kummari Babu .. 3rd Respondent/1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.12.2008 made in M.C.O.P.No.666 of 2007 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Salem.

For Appellant : Mr.S.Arun Kumar

For R2 : Mr.I.Syed Abdulla

For R3 : No Appearance

For R1 : Not Ready in Notice

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J U D G M E N T

The Insurance company is the appellant herein. The respondents 1 and 2 herein are the claimants in M.C.O.P.No.666 of 2007 on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Salem. (for brevity, "the Tribunal").

2.The facts leading to filing of this appeal are as follows:

In an accident that had occurred on 12.11.2003 involving a lorry bearing Regn.No.AAQ 3938 belonging to the third respondent herein and insured with appellant/Insurance Company, one Sivashanmugam, while driving the tanker lorry bearing Regn.No.HR38 D 8852, succumbed to the injuries. Hence, the respondents 1 and 2/claimants, being the legal heirs of the deceased filed a claim petition seeking compensation of Rs.20,00,000/- before the Tribunal, which, after considering the pleadings, oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and ultimately, awarded a total compensation of Rs.2,34,960/- with interest at 7.5%pa from the date of petition. Challenging the same, the appellant/Insurance Company has preferred this Civil Miscellaneous Appeal.

3.The learned counsel for the appellant-Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the accident had occurred only due to the rash and negligent act on the part of the deceased, who was the driver of the tanker lorry bearing Regn.No.HR38 D 8852 and the criminal case registered against him, stood abated. However, without considering the same in a proper perspective, the Tribunal has erred in holding that the driver of the lorry bearing Regn.No.AAQ 3938 was responsible for the accident.

4.Per contra, the learned counsel for the respondent/claimant submitted that the Tribunal, after properly analysing the oral and documentary evidence available on record, has passed the judgment and decree impugned herein and hence, the same do not call for any interference in the hands of this Court.

5.Heard the learned counsel for the appellant as well as the learned counsel for the second respondent and perused the materials available on record. Despite the service of notice, there is no representation on behalf of the third respondent.

6.On a reading of the award passed by the Tribunal, it could be seen that because of the false statement given by the cleaner of the Tanker lorry, the Police of Andhra Pradesh has registered the criminal case against the deceased/driver of the tanker lorry bearing Regn.No:HR 38 D 8852 and the same stood abated, since the deceased had died. The same was corroborated by Ex.P2/English version of the F.I.R. Accordingly, the Tribunal has rejected the evidence of R.W.1/Marimuthu and Ex.R1/final report and placing reliance on P.W.2/eyewitness, Exs.P2/F.I.R

and P4/M.V.I Report, has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry bearing Reg.No.AAQ 3938, insured with the appellant insurance company, which finding this Court is not inclined to interfere.

7.Since the appellant insurance company has not disputed the quantum of compensation awarded by the Tribunal, the same is confirmed as such.

8.Finding no merit, this appeal stands dismissed. No costs. Consequently, the miscellaneous petition is closed. The appellant-Insurance Company is directed to deposit the entire compensation amount, with interest and costs, 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 Tribunal shall transfer the same to the respective bank accounts of the respondents 1 and 2/claimants as per the ratio of apportionment made by the Tribunal through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gbi/srk /rk

To

1. The 1st Additional District Judge,
Motor Accidents Claims Tribunal,
Salem.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.64753

C.M.A.No.1799 of 2009
and
M.P.No.1 of 2009

MR(CO)
CS/20/11/2020