

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE.R.MAHADEVAN

C.M.A.No.185 of 2009

and

M.P.No. 1 of 2009

The New India Assurance Company Ltd
Obli Towers, D.B. Road, R.S.Puram
Coimbatore - 641 002 ... Appellant/3rd Respondent

Versus

- Savithiri (deceased)
- 1. N.Thamburaj
- 2. S.Suganthamani
- 3. Ranganathan
- 4. Ragunathan
- 5. K.A.Mohamed Hanifa ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.02.2008 passed in M.C.O.P.No.138 of 2006 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.V.Srikanth

For Respondents 1 and 2 : Mr.C.Veeraraghavan

For Respondent - 3 : Mr.M.Parthasarathy

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JUDGMENT

This Civil Miscellaneous Petition has been filed by the appellant against the Judgment and Decree dated 27.02.2008 passed in M.C.O.P.No.138 of 2006 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Coimbatore.

2. The brief facts necessary for the disposal of this case are as follows:

On 27.06.2005 at about 10:30 a.m., while the deceased-Narayanasamy was riding his TVS.50 two-wheeler bearing Registration No.TN-38A-6331 at Amarjothi Nagar, Sulur, the Lorry bearing Registration No.TN-23-D-0824 belonging to the fifth respondent and insured with the appellant Insurance Company, came from the opposite direction in a rash and negligent manner and dashed against the two wheeler which the deceased was riding. Due to the said impact, the deceased sustained head injury and also grievous injuries all over the body. Immediately, he was taken to the Coimbatore Medical College Hospital, Coimbatore, but he succumbed to the injuries. The legal heirs of the deceased filed a claim petition before the Tribunal seeking a sum of Rs.5,00,000/- as compensation. The Tribunal, on consideration of oral and documentary evidence, has awarded a sum of Rs. 2,04,000/- with interest at the rate of 7.5% per annum from the date of petition.

3. Aggrieved over the same, the appellant has come forward with the present appeal.

4. The learned counsel for the appellant has submitted that the insured vehicle was a stolen property at the hands of the driver, when the accident had occurred and therefore, in the absence of any liability on the owner, the Insurance Company cannot be fastened with any liability. No grounds have been raised as to the quantum of compensation awarded by the Tribunal in the appeal.

5. The learned counsel for the claimants has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

6. Heard the learned counsel for the appellant and the learned counsel for the claimants and perused the materials available on record.

7. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry, which finding is not disputed by both sides. The quantum of compensation awarded by the Tribunal is also not disputed. The only question that has to be decided in this appeal is as to whether the Insurance Company is liable to pay compensation to the claimants, in view of the contention raised on behalf of the Insurance Company that the vehicle in question is a stolen one at the hands of the driver. The fourth respondent herein is the driver of the lorry. Even though it has been put forth on the side of the Insurance Company before the Tribunal that the third respondent herein had stolen the lorry from the owner, the same has not been proved. Further, it is seen that the driver was already known to the owner of the lorry. The Insurance Policy stood in the name of the previous

owner. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the driver of the lorry, present and previous owners of the lorry and the Insurance Company are liable to pay compensation to the claimants and accordingly directed the respondents 3 to 5 and the appellant Insurance Company to pay compensation to the claimants, jointly and severally. The Tribunal has correctly considered the materials and evidence and held that the driver of the lorry, present and previous owners of the lorry and the Insurance Company are liable to pay compensation to the claimants. This Court is not inclined to interfere with the said factual finding rendered by the Tribunal.

8. In the result, the appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant/Insurance Company is directed to deposit the award amount with interest and costs, as ordered by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw their respective shares, as per the ratio of apportionment made by the Tribunal, on making proper application.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

smn/srk /rk

To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Coimbatore
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.M.Parthasarathy, Advocate SR.No.69034

+1cc to Mr.C.Veeraraghavan, Advocate SR.No.69008

C.M.A.No.185 of 2009
and
M.P.No. 1 of 2009

PVS (CO)
GMY (16/06/2020)