

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1047 of 2015

and

M.P.No.1 of 2015

The Divisional Manager,
ICICI Lombard General Insurance Company Limited,
Divisional Office, Zenith House,
Keshavrao Khade Marg
Mahalaxmi, Mumbai - 400 034. .. Appellant/2nd Respondent

Vs.

1.Unnamalai
2.Suresh
3.Manivannan
4.Manimegalai
5.Gopal
6.Rajammal ..Respondents 1 to 6/claimants 1 to 6
7.The Manager,
M/s. Bharat Carriers Limited,
H.H.5, Pahala, Mancheshwar Industrial Estate,
Bhubaneswar, Orissa - 751 001. ..7th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.09.2013 made in M.C.O.P.No.322 of 2013 on the file of the Motor Accidents Claims Tribunal (District Judge) Special District Court, Krishnagiri.

For Appellant : Mrs.R.Sree Vidhya
For RR 1 to 6 : Mr.A.Arul Kumar
for Mr.Mukund R.Pandiyan
R7 : Not ready in notice

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This Civil Miscellaneous Appeal has been filed against the award dated 30.09.2013 made in M.C.O.P.No.322 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

2.The appellant is the second respondent in M.C.O.P.No.322 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. The respondents 1 to 6 filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one Karunakaran, who died in the accident that took place on 26.04.2011.

3.According to the respondents 1 to 6/claimants, on 26.04.2011 at about 04.30 P.M., while the deceased was driving a lorry bearing Registration No. KA 01 AD 1600 on Kudligi - Chitradurga road, the driver of the lorry bearing Registration No. NL 01 D 5045 belonging to the 7th respondent drove the same in a rash and negligent manner and dashed against the lorry driven by the deceased. Due to the said accident, the deceased succumbed to injuries on the same day and thus the respondents 1 to 6/claimants filed claim petition claiming compensation against the 7th respondent and appellant/Insurance Company being the owner and insurer of the lorry bearing Registration No. NL 01 D 5045 respectively.

4.The appellant/Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 6. According to appellant/Insurance Company, the deceased drove the van bearing Registration No. KA 01 AD 1600 without any valid driving license. The deceased suddenly came to the right side of the road and invited the accident. There is no negligence on the part of the driver of the lorry bearing Registration No. NL 01 D 5045 and hence the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 6/claimants. In any event, the compensation claimed by the respondents 1 to 6/claimants are highly excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, on behalf of the respondents 1 to 6 / claimants, two witnesses were examined as P.W.1 and P.W.2 and 10 documents were marked as Exs.P1 to P10. No oral and documentary evidence were let in on behalf of the 7th respondent and appellant/Insurance Company.

6.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 7th respondent and directed the 7th respondent and appellant-Insurance Company, being the owner and insurer of the lorry jointly and severally to pay a sum of Rs.16,57,600/- as compensation to the respondents 1 to 6/claimants.

7.Challenging the said award dated 30.09.2013 made in M.C.O.P.No.322 of 2013, the appellant-Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that the deceased also was negligent and contributed to the accident. The Tribunal ought to have seen that accident has occurred due to head on collision of two vehicles and ought to have fixed negligence on the part of the deceased. The Tribunal without any basis fixed monthly income of the deceased at Rs.12,000/-and granted excess amounts as compensation. The amounts granted by the Tribunal is excessive. The age of the eldest son of the deceased is 27 years and the wife of the deceased was 42 years at the time of accident. The Tribunal ought to have fixed the age of the deceased at 50 years instead of 46 years and prayed for allowing the appeal.

9.Per contra, the learned counsel appearing for the respondents 1 to 6/claimants contended that the accident has occurred only due to negligence on the part of the driver of the lorry belonging to the 7th respondent and there is no negligence on the part of the deceased. The deceased was aged 46 years and was a lorry driver by profession and was earning a sum of Rs.12,000/- per month. Hence, a sum of Rs.12,000/- fixed by the Tribunal as monthly income of the Tribunal is proper. The Tribunal has granted a sum of Rs.14,97,600/- as compensation towards loss of income, which is just and reasonable. The compensation awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant-Insurance Company as well as respondents 1 to 6 and perused the entire materials on record.

11.From the materials available on record, it is seen that the respondents 1 to 6/claimants examined P.W.2, cleaner of the lorry, who was an eye-witness to the accident. P.W.2 has deposed that accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 7th respondent. The appellant in cross examination could not disprove that P.W.2 was cleaner of the lorry and he was an eye-witness to the accident. F.I.R. is registered only against the driver of the lorry belonging to the 7th respondent and insured with the appellant. The appellant did not examine the driver of the lorry belonging to the 7th respondent or any eye-witness to substantiate their claim that deceased suddenly came to right side of the road and invited the accident. The Tribunal considering the pleadings, oral and documentary evidence let in

by the respondents 1 to 6, held that the accident has occurred only due to rash and negligent driver by the driver of the lorry belonging to the 7th respondent and insured with the appellant. There is no error in the above finding of the Tribunal warranting any interference by this Court.

12.As far as quantum of compensation is concerned, it is not in dispute that deceased was working as lorry driver. The accident occurred in the year 2011 and the deceased was aged 46 years at the time of accident. Considering the above facts, the notional income of the deceased at Rs.12,000/- per month fixed by the Tribunal is not excessive. Similarly, considering the fact that 25% future prospects has not been granted and no amount was granted towards loss of estate, the amounts granted by the Tribunal towards loss of consortium and funeral expenses are not interfered with.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the amount of Rs.16,57,600/- awarded by the Tribunal as compensation to the respondents 1 to 6/claimants, along with interest and costs is confirmed. The appellant-Insurance Company and the 7th respondent are jointly and severally directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.322 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. On such deposit, the respondents 1 to 6 are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

सत्यमेव जयते
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

+1 CC to Mr.Mukund R . Pandian, Advocate sr 104081.

C.M.A.No.1047 of 2015

VD(CO)
SP(19/08/2020)



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