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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2546 of 2009

United India Insurance Co. Ltd.,
Post Box No.15,
J.B.M.Building, 1st Floor,
Ramchand, Kotagiri,
The Nilgiris - 643 217

..Appellant/2nd Respondent

Vs.

1. Ramasamy

2. Neelaveni

...Respondents/Petitioner 1 and 2

3. John Dharma,
The Director, Don Bosco,
Anbu Illam, G.M.Nagar,
18, Ukkadam, Coimbatore.

...Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 15.10.2007 made in M.C.O.P.No.579 of 2005 on the file of The Motor Accidents Claims Tribunal, (IV FTC) Coimbatore at Tiruppur.

For Appellant : Mr.T.Ravichandran

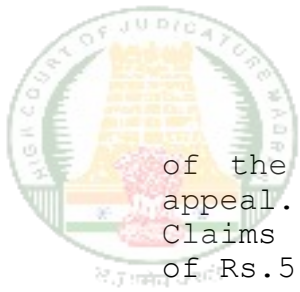
For Respondents : R1 & R2 - Not ready notice
R3 Ex parte

J U D G M E N T

The instant appeal has been filed by the United India Insurance Company Limited challenging the Award dated 15.10.2007 passed by the Motor Accident Claims Tribunal (IV Fast Track Court), Coimbatore at Tiruppur in MCOP.No.579 of 2005.

2.The brief facts leading to the filing of the instant appeal are as follows;

(i)One Kannan died on 09.06.2005 as a result of an accident caused by a Van whose number was unidentifiable. The dependants



of the deceased Kannan are the respondent Nos.1 & 2 in this appeal. They preferred a claim before the Motor Accidents Claims Tribunal in M.C.O.P.No.579 of 2005 seeking compensation of Rs.5,00,000/- for the death of Kannan.

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(ii) The Motor accident Claims Tribunal, by its award dated 15.10.2007 in MCOP.No.579 of 2005 directed the appellant United India Insurance to pay the respondents a sum of Rs.1,62,000/- together with interest at 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the award dated 15.10.2007 passed in M.C.O.P.No.579 of 2005, the instant appeal has been filed by the United India Insurance Company Limited.

4.Heard, Mr.Ravichandran, learned counsel for the appellant.

5.According to the learned counsel for the appellant, the tribunal has not fixed the liability on both the vehicles. Further, the learned counsel would contend that the tribunal ought to have seen that the FIR and Charge sheet was filed as 'Hit and Run' against the opposite vehicle and the police had closed the case as "undetected". Therefore, it is submitted that the award of the tribunal is unsustainable.

6.Before the tribunal, the first petitioner in the claim petition was examined as P.W.1 and Exs.A1 to A4 were marked. On behalf of the respondent, the Assistant Manager of the Insurance Company was examined as R.W.1 and only one document was marked as Ex.B1. It was contended on behalf of the Insurance Company before the tribunal that the deceased had travelled as a gratuitous passenger and therefore, the Insurance Company is not liable to pay any compensation. After hearing both side, the tribunal has partly allowed the petition with proportionate cost and the second respondent therein was directed to pay compensation of Rs.1,62,000/- on behalf of the first respondent to the petitioners with interest at the rate of 7.5% p.a., from the date of petition till the date of payment. The second respondent was directed to deposit the said amount within two months from the date of the order. The petitioners were directed to share the amount at Rs.82,000/- and Rs.80,000/- respectively.

7.It is seen from the records that the vehicle in which the deceased had travelled was hit by a van, it's registration number could not be traced. Even in the FIR registered on the basis of the complaint given by the driver of the van, which was insured with the appellant/Insurance Company, it was only mentioned as "Hit and Run". In such circumstances, this Court is of the view that when there is no evidence to show that the



driver who had driven the vehicle insured with the Insurance Company is not at fault, the tribunal is right in fastening the liability on the appellant/Insurance Company. Moreover, it is alleged that when the deceased was travelling in the van, he was seated in the last seat. At the time of accident, the opposite van hit the van insured with the Insurance Company from behind.

8. In such circumstances, it cannot be ruled out that the collision was solely due to the negligent driving of the driver of the opponent van. When the particulars of the opponent van could not be traced, naturally, the Insurance Company of the van in which the deceased has travelled alone has to be fastened with the liability. The tribunal is therefore right in awarding the compensation amount and the plea of the appellant to apportion the compensation amount at 50% against the opponent van, whose particulars are not available, cannot be considered.

9. In the result, the appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Motor Accidents Claims Tribunal,
(IV FTC) Coimbatore at Tiruppur.
2. The Section Officer,
V.R. Section,
High Court, Madras - 104.

C.M.A.No.2546 of 2009

JPL(CO)
RGA(27/06/2022)