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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.42 of 2009

and

M.P.No.1 of 2009

The Divisional Manager,
The United India Insurance Company Limited,
Pondicherry .. Appellant/2nd Respondent

Vs.

1.Narayanan .. 1st Respondent / 1st Petitioner
2.Patchayammal .. 2nd Respondent / 2nd Petitioner
3.Kumar (Minor) .. 3rd Respondent / 3rd Petitioner

(3rd respondent is being minor
represented by the next friend
and father Narayanan the 1st
respondent herein)

4.The Mother General,
Immaculate Generalate,
Pondicherry ..4th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 11.09.2006 in M.C.O.P.No. 317 of 1993, on the file of the Motor Accidents Claims Tribunal, (Principal Sub Judge), Pondicherry.

For Appellant : Mr.M.Sathish Babu
for Mr.S.J.Jagadev

For R1 : Died

For R2&R4 : No appearance

For R3 : Dismissed



J U D G M E N T

The Insurance Company is the appellant herein.

2. The brief averments made in the claim petition in brief are as follows:-

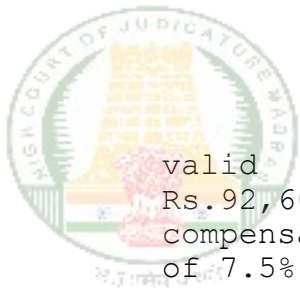
(i) On 01.06.1988 at about 19.15 hours, the deceased and his father Narayanan boarded the Tractor-vehicle No.PYT 152, Tractor No.PYS 4835 after loading sugarcane in the Tractor. Driver Ramachandiran, S/o.Subbrayalu Naidu was driving the Tractor. The deceased Rajendran's father was standing at the end of the TOW BAR holding the rod behind the driver seat. The deceased was standing behind his father holding the rod behind the tractor. While, the vehicle was passing near the Karayamputhur colony going North to South, the driver of the Tractor drove the same very rashly and negligently.

(ii) Due to the rash and negligent way of driving of the driver, the deceased had fallen down on the left hand side and the left side front wheel of the Tractor run over the deceased near his waist.

(iii) Due to the impact, the deceased died on the spot. The 1st and 2nd respondents are the parent of the deceased and they are having one minor children. (respondent No.3). They were dependents of the deceased. Since the accident occurred due to the negligence of the driver of the vehicle, the respondents 1 to 3 are entitled for the compensation. The driver of the vehicle admitted his negligence before the Judicial First Class Magistrate Court in S.T.R.No.304/88 on 14.12.1988 and paid a fine of Rs700/-.

3. The Insurance Company /appellant herein filed a counter statement alleging that the deceased was an unauthorized and gratuitous passenger who was travelling in the tractor which was loaded with sugarcane and therefore, they are not liable to pay any compensation. Further, the deceased was sitting on the TOW BAR of the tractor, which itself is violation of the terms and conditions of the policy and also stated that the driver of the vehicle does not possess any valid driving licence at the time of accident.

4. On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that both the deceased and driver of the first respondent are jointly liable for the negligence fixed the liability at 50:50. With regard to wrong position of valid and effective driving licence, the Tribunal held that the first respondent/Insurance Company has not discharged their burden and accordingly, held that there is no



valid driving licence and arrived at compensation of Rs.92,600/- and directed the appellant to pay 50% of the compensation i.e., Rs.46,800/- payable with interest at the rate of 7.5% p.a from the date of petition till the date of deposit.

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5. The learned counsel for the appellant/Insurance Company herein would submit that the finding of the Tribunal in fixing the liability at 50:50 is erroneous and it is also drawn to the fact that the date of the accident is 01.06.1998 being prior to Amendment Act.

6. No representation for the respondents.

7. After perusing the documents, it is seen that the claim petition has been filed under Section 110-A of the M.V. Act, 1939 claiming a compensation for the death of a boy aged about 19 years old by the parents of the deceased.

8. On a perusal of the evidence, it is seen that though the deceased was standing on the TOW BAR due to the rash and negligent driving of the driver of the tractor, he fell down and the wheel of the trailer run over him and he died on the spot and the Tribunal has recorded the evidence and held that the deceased was not a passenger. The finding of the Tribunal regarding the manner of the accident as well as the status of the deceased boy not warrant any interference. Furthermore, the quantum of compensation awarded by the Tribunal appears to be reasonable.

9. In the result,

i) This Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

ii) The Insurance Company shall deposit the amount if any (not yet deposited), within a period of eight weeks from the date of receipt of a copy of this judgment.

iii) On such deposit being made, the claimants shall withdraw the same in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Principal Sub Judge, Pondicherry.

2. The Section Officer,
V.R.Section, High Court, Chennai.

Judgment in
C.M.A.No.42 of 2009 and
M.P.No.1 of 2011

RV (CO)
SSM(19/09/2019)