

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.751 OF 2009

AND

M.P.NO.1 OF 2009

The Divisional Manager,
United India Insurance Co. Ltd.,
No.16, 1st Floor,
J.N.Street, Puducherry. ... Appellant/2nd Respondent

Vs.

1.Karthik ... 1st Respondent/Petitioner

2.Sankaranarayanan ... 2nd Respondent/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 05.12.2008 made in M.A.C.T.O.P.No.752 of 2007 on the file of the Motor Accident Claims Tribunal (Principal District Judge) (Presiding Officer) at Puducherry.

For Appellant : Mr.M.J.Vijaya Raghavan

For R1 : M/s.D.Jayarani

J U D G M E N T

Challenging the liability of the insurance company to pay compensation to the first respondent/claimant, the present Civil Miscellaneous Appeal came to be filed.

2.The case in brief is as follows:

On 09.04.2007 at about 12.15 p.m, one Muthu was traveling in the Tractor bearing Registration No. TN-32-Y-9258 belonging to the second respondent and insured with the appellant insurance company from Puducherry to Marakanam. When the vehicle was nearing Indian Bank, Mahatma Gandhi Road, Kottakuppam, due to rash and negligent driving by its driver, the said Muthu fell down from the vehicle and the wheel of the Tractor ran over the

head resulting in his instantaneous death. Since the wife of the deceased predeceased him, his son being the only surviving legal heir, filed a claim petition claiming a compensation of Rs.10,00,000/-. On a consideration of the evidence available on record, the Tribunal has come to a conclusion that both the driver of the Tractor and the deceased were responsible for the accident and accordingly fixed the contributory negligence at 70% and 30% on them respectively and ultimately, awarded a total compensation of Rs.2,52,500/- with interest at the rate of 7.5% per annum from the date of petition. Consequently, the appellant insurance company was directed to deposit 70% of award amount (Rs.1,77,000/-) with a right to recover the same from the owner of the vehicle. Aggrieved over the same, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant has disputed only the findings of the Tribunal on negligence and liability of the insurance company to pay compensation. According to him, at the time of accident, the deceased was sitting on the bumper of the Tractor, that too, in a drunken mood and he himself fell down from the vehicle and sustained head injury and thereby, invited the accident and as such, the driver of the Tractor was not responsible for the accident. Hence, the learned counsel submitted that the appellant insurance company is not liable to pay compensation.

4.Per contra, the learned counsel for the first respondent/claimant submitted that based on the oral and documentary evidence, the Tribunal has rightly rendered its findings on negligence and liability and has awarded the just compensation and hence, the same do not call for any interference by this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

6.On a perusal of the award, it is seen that the first respondent/claimant who was stated to be the eyewitness to the accident, examined himself as P.W.1, who narrated about the manner of accident. According to him, his father/ deceased was sitting in the Tractor in a place in between the Engine and mudguard; the driver of the Tractor drove the vehicle in a speedy manner; while negotiating a turn in a curve, the deceased fell down from the vehicle and the wheel of the Tractor ran over his head, resulting in his instantaneous death. The testimony of P.W.1 was supported by Ex.A1 First Information Report, Ex.A4-Accident Inspection report and Ex.A6-charge sheet, as per which, the driver of the Tractor was responsible for the accident. On

the side of the appellant insurance company, their official Selvaraj was examined as R.W.1, who has deposed in his evidence that as per insurance policy, the risk covers only the driver of the Tractor; and a third party cannot be allowed to travel in the vehicle, whereas in the present case, the owner of the vehicle permitted the first respondent/claimant to travel in the vehicle apart from the driver, in violation of the policy conditions. Exs.B1 to B3 documents were marked to substantiate the same. The Tribunal after examining the oral and documentary evidence adduced by the parties, has rightly come to the conclusion that the driver as well as the deceased was responsible for the accident and their contributory negligence was fixed at 70% and 30% respectively and accordingly, directed the appellant/insurer of the tractor to pay compensation initially and thereafter, recover the same from the owner of the vehicle, which this Court is not inclined to interfere.

7.Since the quantum of compensation and the rate of interest awarded by the Tribunal are not disputed by the appellant insurance company, the same are hereby confirmed by this Court.

8.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. The appellant / Insurance Company is directed to deposit 70% of the award amount (Rs.1,77,000/-) as ordered by the Tribunal with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount lying in the deposit, to the Savings Bank Account of the first respondent/claimant through RTGS, within one week thereafter. It is needless to state that the appellant insurance company can recover the compensation paid to the claimant from the owner of the vehicle in accordance with law.

Sd/-
Assistant Registrar(Arbitration)

//True Copy//

Sub Assistant Registrar

rna/rk

To

1. The Motor Accidents Claims Tribunal,
Principal District Judge,
Puducherry.

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

+1cc to Mr.M.J.Vijaya Raghavan, Advocate, S.R.No.70752

C.M.A.No.751 of 2009
and M.P.No.1 of 2009

MR (CO)
CS/02/06/2020



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