IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.810 of 2009
and
M.P.No.1 of 2009

National Insurance Company Limited,
Salem. .. Appellant/2nd Respondent

Vs.

1. M.Vijaya
2. Devi
3. M.Venketesh ... Respondents/Petitioners 1 to 3
4. Munuswamy

...R4/1st Respondent

(R4 respondent set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.08.2007 made in M.A.C.T.O.P.No.97 of 2006 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Salem.

For Appellant : Mrs. N.B.Surekha

For R1 to R3 : Mr.D.Balachandran

J U D G M E N T

This appeal is preferred by the appellant Insurance Company against the award of a sum of Rs.3,46,500/- towards compensation to the respondents 1 to 3/ claimants, due to the death of one Murugeshan in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, i.e., on 09.12.2005, at about 22.00hours, the deceased Murugeshan was walking on the extreme left side of Erumapalayam Road. At that time, a lorry bearing registration No.TDM 6279 belonging to the fourth respondent and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the pedestrian Murugeshan.

As a result of the same, the deceased sustained fatal injuries and died in the hospital. Stating so, his mother, wife, daughter and son, being the surviving legal heirs, filed a claim petition claiming compensation of Rs.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,46,500/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company submitted that at the time of accident, the deceased was in drunken mood and due to the same, he was not able to control himself and fell before the lorry. Without considering the same in a proper perspective, the Tribunal has erred in fixing the entire negligence on the driver of the lorry insured with the appellant insurance company. She further submitted that the driver of the lorry was not holding driving licence at the time of accident, which is violation of the policy conditions and hence, the appellant insurance company is not liable to pay compensation to the claimants. She also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.On the other hand, the learned counsel for the respondents/claimants submitted that the Tribunal after considering the materials and evidence available on record, has rightly rendered its findings on negligence and liability on the appellant insurance company and awarded the just compensation and hence, the same do not call for any interference at the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.Before the Tribunal, one Arumugam, eyewitness to the accident was examined as P.W.2, according to whom, on 09.12.2005, at about 10.00pm, while he along with his friend, was walking on the road, the deceased was walking in front of him; at that time, the lorry insured with the appellant insurance company came in a rash and negligent manner and dashed against the deceased. Further, he deposed during the cross examination, that he saw the accident at 10 feet distance and he did not know whether the deceased was in drunken condition. As per Ex.P1 First Information Report, the driver of the lorry was responsible for the accident and he was subjected to criminal prosecution for the same. Though it was contended on the side of the appellant insurance company before the Tribunal that the deceased was in drunken mood, due to which, he himself invited the accident and R.W.1 was examined, no concrete material was produced to substantiate their stand and disprove the evidence of P.W.2. Hence, the Tribunal, placing reliance on the evidence of P.W.2/eye witness to the occurrence, has concluded that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, which finding this Court is not inclined to interfere.

7.As regards the liability of the insurance company to pay compensation, it is the contention of the appellant insurance company that the driver of the lorry at the time of accident, was not holding a valid driving licence to drive the vehicle and thereby, the owner of the vehicle has violated the policy conditions and hence, the appellant insurance company is not liable to pay compensation. Ex.R2 charge sheet filed before the Judicial Magistrate, Salem, disclosed that the driver of the lorry did not possess the valid driving licence at the time of accident. Though the appellant insurance company has sent two intimations viz., Exs.R3 and R4, to the fourth respondent/owner of the vehicle for production of the documents, no reply was forthcoming. Further, the fourth respondent remained exparte before the Tribunal. When such being the position, this Court comes to the conclusion that the driver of the lorry was not holding the valid driving licence at the time of accident and thereby, the owner of the vehicle has violated the policy conditions. However, considering the fact that the insurance policy was in force, this Court deems it fit and appropriate to direct the appellant insurance company to pay compensation at first instance and thereafter, recover the same from the owner of the vehicle. Accordingly, the finding of the Tribunal as regards the liability of the insurance company, is modified.

8.With respect to quantum of compensation, after evaluation of the oral and documentary evidence adduced by the respondents/claimants, the Tribunal has awarded Rs.3,24,000/- towards loss of income, by taking the monthly income of the deceased at Rs.2,700/-, deducting 1/3rd towards personal expenses and adopting the multiplier of 15, which is just and reasonable and hence, the same is hereby confirmed. That apart, the Tribunal has awarded Rs.2,500/- towards funeral expenses and transportation, Rs.10,000/- towards loss of love and affection to the wife of the deceased, Rs.10,000/- towards loss of love and affection to the 2nd and 3rd respondents, which are also just and reasonable and hence, the same need not be interfered with by this Court.

9.In the result, this appeal is partly allowed. No costs. Consequently, connected Miscelllaneous Petition is closed. The appellant-Insurance Company is directed to deposit the entire compensation amount 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 and thereafter, recover the same from the fourth respondent/owner of the vehicle in accordance with law. On such deposit being made, the respondents/claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, on making proper application.

Sd/-
Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal,
   I Additional District Judge,
   Salem.

2.The Section Officer,
   VR Section,
   High Court,
   Madras.

+1cc to Mr.Mrs. N.B.Surekha, Advocate SR.No.64058

C.M.A.No.810 of 2009
and
M.P.No.1 of 2009

SPD(CO)
GMY(10/11/2020)