

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.11.2019
CORAM:
THE HONOURABLE MRS. JUSTICE R. HEMALATHA
CMA.No.404 of 2010

United India Insurance Co. Ltd.,
Salai road,
Tiruchirapalli.

...Appellant/4th Respondent

Vs.

1.Ranganathan
2.Sivagami ...Respondents1 &2/Petitioners
3.K.Ramasamy
4.The Oriental Insurance Co. Ltd.,
Promonade road, Trichy.
(R4-exonerated before the Tribunal
Hence notice may be dispensed with)
5.K.V.Chinnasamy
(R5-Exparte before the Tribunal
notice may be dispensed with)
... Respondents 3 to5/
Respondents 1 to 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.06.2008 passed in MCOP.No.311 of 2006, on the file of the Motor Accident Claims Tribunal / District Court, Perambalur.

For Appellant : Mr.M.B.Raghavan
For Respondents : No appearance

J U D G M E N T

The United India Insurance Company, the fourth respondent in MCOP.No.311 of 2006 on the file of the Motor Accident Claims Tribunal / District Court, Perambalur has filed the present appeal. The respondents 1 and 2 / claimants filed the above claim petition under Sections 140 and 160 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the death of their son Arivazhagan, aged 16 years in a road accident on 14.06.2001.

2. The case of the claimants in nutshell is as follows:

On 14.06.2001, the deceased Arivazhagan was travelling as a passenger in a van bearing Registration No. TN 51 Y 1414 and at about 09.15 am, when the van was nearing Maruvathur Perumal Temple, Perambalur a speeding bus bearing Registration No. TN 45 T 1144 hit the van, as a result of which, the deceased sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the drivers of the van and the bus was the cause of the accident and therefore the owners of the van and the bus and their respective insurers are jointly and severally liable to pay compensation.

3. The owner of the bus remained absent before the Tribunal and therefore he was set exparte and all the other respondents contested the claim petition. The learned District Judge / Motor Accidents Claims Tribunal, Perambalur while awarding a compensation of Rs.1,80,000/- together with interest at the rate of 7.5% per annum, concluded that since the van bearing Registration No. TN 51 Y 1414 belonging to the third respondent was not insured, the owner of the van, the owner of the bus and the insurer of the bus (present appellant) are jointly and severally liable to pay compensation to the claimants. Aggrieved over the orders passed by the Tribunal, the United India Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.M.B.Raghavan, learned counsel appearing for the appellant contended that the Tribunal was wrong in fixing negligence on the part of the driver of the bus since the driver of the van alone was rash and negligent in driving his vehicle and hit the stationary bus. He also drew the attention of this Court to the evidence of Xaviour Singarayar (RW1) examined on the side of the United India Insurance Company and contended that the driver of the van alone was rash and negligent in driving his vehicle.

5. No appearance on behalf of the respondents.

6. A perusal of the FIR shows that initially FIR was registered against the driver of the van. The final report filed by the police has not been adduced by the parties to the claim petition. Sundaram (PW2), who is an eyewitness to the occurrence had deposed that both the drivers of the van and the bus were rash and negligent. The FIR was registered by the police based on the report of the Village Administrative Officer. Merely based on the FIR, it cannot be concluded that the driver of the van alone was rash and negligent. The evidence of RW1 is also not sufficient to fix the entire negligence on the part of the driver of the van.

7. In the instant case, the bus hit the van from behind and in the facts and circumstances, the entire negligence cannot be fixed on the part of the driver of the van alone. The Tribunal had dealt with this aspect in extenso and had assigned cogent reasons for arriving at the conclusion that both the drivers were rash and negligent in driving their respective vehicles. All the observations made by the Tribunal are perfectly in order and therefore, there is no reason to interfere with the same.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no appeal / cross objection was filed by the claimants. A perusal of the award also shows that it is not on the higher side and therefore, the same is upheld.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs.

(ii) The orders passed by the Tribunal is upheld.

(iii) The present appellant, third and fifth respondents are jointly and severally directed to deposit the compensation awarded by the Tribunal i.e., Rs.1,80,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.311 of 2006 on the file of the Motor Accident Claims Tribunal / District Court, Perambalur within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1 and 2 / claimants are at liberty to withdraw the same, as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-

Asst.Registrar (Ad I)

/true copy/

Sub Asst. Registrar

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To

1.The District Court,
The Motor Accident Claims Tribunal,
Perambalur.

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

+1 cc to Mr.N.VijayaRaghavan Advocate sr91279

CMA.No.404 of 2010

pvs(co)
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