IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.1609 of 2011 and
M.P.No.1 of 2011

National Insurance Company Limited,
Divisional Office-1, L.R.N. Complex,
Saradha College Road,
Salem.

...Appellant

Vs.

1. Jothi
2. Minor Sivananantham
3. Minor Vignesh
4. Minor Pradeep
5. Baggiyam

(Minors represented by their mother 1st petitioner as next friend and natural guardian)

6. V.Muruganandam
7. United India Insurance Company Limited,
B.O. Tiruchengode.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree passed in M.C.O.P.No. 867 of 2003, dated 03.03.2010, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem.

For Appellant : Mr.N.B.Surekha
For Respondents : Mr.K.Kuppusamy for R1 to R5
Mr.T.Ravichandran for R7
R6-not ready in Notice

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 867 of 2003, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem.

2. The brief case of the respondents 1 to 5/claimants is as follows:

On 27.05.2003, at about 11.30 pm, when the deceased Balakrishnan was riding his Ambassador car bearing Registration No. TDD 2211, near Kumaragiri bye pass road at

Salem, a lorry bearing Registration No. AP 03 T 2055 came at the opposite side in a rash and negligent manner and dashed against the car, due to which both the vehicles got fire and completely damaged and the deceased Balakrishnan was burnt alive in the driver seat itself. The sixth respondent herein is the owner of the lorry which caused the accident, and the present appellant is its insurer. The seventh respondent herein is the insurer of the car, which the deceased drove at the time of the accident. According to the respondents 1 to 5/claimants, the rash and negligent driving of the driver of the lorry bearing Registration No. AP 03 T 2055 was the cause of the accident, and that, since, the said lorry was insured with the present appellant, both the owner of the lorry bearing Registration No. AP 03 T 2055 and the present appellant, are jointly and severally liable to pay compensation of Rs.10,00,000/- to them.

3. The learned Tribunal after analysing the evidence on record, awarded compensation of Rs.4,02,500/- together with interest at the rate of 7.5% per annum to the respondents 1 to 5/claimants.

4. Aggrieved over the orders passed by the Tribunal, the National Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988. They have preferred this appeal contending that the deceased Balakrishnan himself was the cause of the accident and therefore, fixing the liability on the part of the Insurance Company of the offending vehicle is not correct.

5. The learned counsel appearing for the appellant - National Insurance company Limited would contend that there is no eye witness to speak about the manner of the accident and also negligence on the part of the driver of the lorry bearing Registration No. AP 03 T 2055 and no documentary evidence has been placed to substantiate the alleged negligence on the part of the driver of the said lorry. Therefore, the rash and negligence is not proved and hence they are not liable to pay any compensation to the respondents 1 to 5/claimants.

6. The learned Counsel appearing for the respondents 1 to 5/claimants would contend that the claim petition has been filed under Section 163 (A) and 166 of the Motor Vehicles Act, 1988, read with Rule 3 of the TN MAC rules and as such the Tribunal fixed the negligence on the part of the driver of the said lorry based on the FIR (Ex.A1), wherein, it could be seen that the accident has taken place due to the head on collision between the Ambassador car bearing Registration No. TDD 2211 and the lorry bearing Registration No. AP 03 T 2055.

7. The learned counsel appearing for the United India Insurance Company (Insurance company of the said car) had submitted that they are only a formal party in this appeal, since, the owner-cum-driver of the said car met with an accident, and hence, they are not liable to pay any compensation to the respondents 1 to 5/claimants.

8. A perusal of the records shows that the claimants were the wife, minor children and the mother of he deceased Balakrishnan who died in the road accident that occurred on 27.05.2003, at about 11.30 pm, near Kumaragiri bye pass road. The first respondent herein examined herself as PW1 and exhibits A1 to A4 were marked. The Administrative Officer of the United India Insurance Company Limited was examined as RW1 and exhibit B1 was also marked. Due to the collision between the lorry and the car, the car got fire and the car driver died on the spot due to burn injuries. The National Insurance company Limited and the United India Insurance company limited in their counter admitted that the accident was result of collision of the car and the lorry. Originally, the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 and later it was amended to claim compensation under Section 163 (A) of the Motor Vehicles Act, 1988. Conversion of claim to Section 163 (A) from 166 by amendment, has not been challenged. The claim is under Section 163 (A) of the Motor Vehicles Act, 1988. Section 163(A) does not provide apportionment of compensation for negligence or contributory negligence. The liability to pay compensation under Section 163(A) of the Act is one the principle of 'No fault liability'.

9. The case of the claim before the Tribunal is one under Section 163 (A) and the FIR (Ex.A1) indicates the happening of the accident. The author of the FIR (Ex.A1) is a third party on goer who had described the position of the vehicle after the accident and hence I am unable to accept the contention put forward by the learned counsel appearing for the United India Insurance Company Limited. Taking into consideration, the deceased was owner-cum-driver of the said car and he died in the accident and also taking note of the averments made in FIR (Ex.A1), this Court is of the considered view that, the negligence on the part of the driver of the said lorry and the owner-cum-driver of the said car should be fixed in the ratio 90:10 and hence, the finding of the Tribunal that the owner of the said lorry and the National Insurance Company Limited are liable to pay the compensation to the respondents 1 to 5/claimants stands modified to the limited extent indicated above. Therefore, the present appellant - National Insurance company Limited is liable to pay only 90% of the

compensation awarded by the Tribunal alongwith proportionate interest.

10. Quantum of Compensation: The Tribunal after taking into consideration that the year of the accident is 2003 and the deceased was running the car as taxi, fixed the notional income of the deceased as Rs.3,000/- per month. After deduction of 1/3rd towards the personal expenses of the deceased, it fixed the contribution of the deceased to the family as Rs.2,000/- per month. Since the age of the deceased was 35, the Tribunal adopted multiplier of 15 and awarded a sum of Rs.3,60,000/- towards 'loss of dependency' which does warrant any interference. The award passed by the Tribunal under the other heads are also found to be reasonable and therefore, the same is hereby confirmed.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The orders passed by the Tribunal with regard to the liability is modified and the negligence on the part of the driver of the lorry bearing Registration No. AP 03 T 2055 and the owner-cum-driver of the Ambassador car bearing Registration No. TDD 2211 is fixed in the ratio 90:10.

(iv) Therefore, the present appellant is liable to pay only 90% of the compensation awarded by the Tribunal together with proportionate interest at the rate of 7.5% per annum.

(v) The learned counsel appearing for the present appellant - National Insurance Company Limited submitted that they have already deposited the entire compensation awarded by the Tribunal. Hence, they are permitted to withdraw the balance (10% of the compensation awarded by the Tribunal together with proportionate interest), after following due process of law.

(vi) The respondents 1 and 5 herein are permitted to withdraw their share of compensation, as apportioned by the Tribunal, after following due process of law.

(vii) The second, third and fourth respondents herein are minor, and therefore, their share of compensation amount, as apportioned by the Tribunal, is ordered to be deposited in any one of the nationalized bank, until they attain majority, and the first respondent herein is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Principal District Judge,
Salem

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

+1cc to Mr.K.Kuppusamy , Advocate SR.No. 17675
+1cc to Mr.N.B.Surekha , Advocate SR.No. 17474
+1cc to Mr. T.Ravichandran, Advocate SR.No. 17560

C.M.A.No.1609 of 2011 and
M.P.No.1 of 2011

A.SK(22/07/2019)