

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.03.2019
CORAM:
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN
C.M.A.No.2350 of 2011
&
M.P.No.1 of 2011

The New India Assurance Company Limited,
Dindigul

...Appellant

Vs.

1.N.Sivakami

2. Minor N.Arunachalam
Minor rep.by mother & guardian N.Sivakami

3. Prema
(3rd respondent set-exparte before the Tribunal)

4. Tamilnadu State Transport Corporation,
Trichy.
(4th respondent given up in the Appeal)

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.02.2011, in M.C.O.P.No. 206 of 2010, on the file of the Motor Accidents Claims Tribunal (Principal District Judge), at Perambalur.

For Appellant : Mr.M.Krishnamoorthy
For Respondents 1 & 2 : Ms.S.Lalitha
for Mr.C.Vidhusan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the New India Assurance Company Limited, Dindigul, challenging, the Judgment and decree passed in M.C.O.P.No. 206 of 2010 dated 04.02.2011 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), at Perambalur.

2. The Insurance Company is the Appellant herein. The respondents 1 & 2 herein preferred the claim petition before the Tribunal alleging that on 10.09.2009 at about 3.00 hours while the deceased Nagappan was traveling in a OPAL CORSA Car bearing Registration No.TN.37/AA 8832 belonging to the third respondent and insured with the appellant and was proceeding

from south to north on the Trichy to Chennai NH.45 Road, when it came near Gandhi Nagar bus stop at Murukkankudi Pirivu Road, the driver of the car drove the car in a rash and negligent manner in order to overtake a Tipper lorry on the left side which was going ahead the above said car. On losing the control, the car dashed on the backside of the bus bearing Registration No.TN.45/N.1488 belonging to the fourth respondent which was parked on the left side of the above said road to board the passengers. Due to which, the deceased, who was travelling in the car, sustained fatal injuries all over the body and the other persons travelled in the car also sustained injuries. Immediately after the accident the deceased was taken to the Government Hospital, Perambalur, but due to the fatal injuries he died on the way to Hospital. The Post mortem was conducted by the Duty Medical Officer, Government, Hospital, Perambalur.

3. The insurance company filed a counter statement before the Tribunal disputing the manner of the accident and also denying the alleged age and avocation of the income.

4. Before the Tribunal, the wife of the deceased was examined as PW1 and witness of the occurrence viz., Lakshmi was examined as PW2 and Exs.P1 to P11 were marked. On behalf of the fourth respondent/ Tamilnadu State Transport Corporation driver was examined as RW1 and Assistant Manager was examined as RW2 and Ex.R1 and Ex.R2 were marked. The Motor Vehicle Inspector's report was marked as Ex.R1 and the copy of the policy of the third respondent's vehicle was marked as Ex.R2.

5. The Trial Court, on considering the oral and documentary evidences has held that the accident taken place due to rash and negligent driving of the driver of the car and accordingly, fixed liability on the owner and insurer of the car, who are respondents 1 & 2 before the Tribunal and exonerated the Transport Corporation bus.

6. Aggrieved against the order and decreetal order passed in M.C.O.P.No.206 of 2010, the Insurance company has preferred this Appeal.

7. Heard both sides. Perused the materials available on record.

8. As the point of calculation based upon the Ex.P11, which is the letter issued by the LIC and Ex.P5 which is the identity card issued by the L.I.C., the Tribunal has rightly arrived at the monthly income of the deceased at Rs.10,000/- and after deducting 1/3rd towards personal expenses arrived at a sum of Rs.80,000/-per annum towards loss of income. Hence this Court finds that the quantum of Award passed by the Tribunal cannot be said to be excessive.

9. After hearing the learned counsel appearing on either side and on going through the evidence of P.W.2 - one Lakshmi, who travelled in the car, coupled with the fact that on the date of the accident, the driver of the car possessed valid and effective driving licence Ex.P7 and copy of the policy marked as Ex.P8, and Ex.P9 and Ex.P10 are the Motor Vehicle Inspector's report showing the damage to the respective vehicles, this Court finds that the finding of the Tribunal that the accident has taken place due to the rash and negligent driving of the third respondent's car which is duly insured with the insurance Company, does not suffer from any material irregularity or infirmity. Hence, this Court cannot interfere with the compensation awarded by the Tribunal. Therefore, the award passed by the Tribunal is hereby confirmed.

10. In view of the matter, the award passed by the Tribunal is hereby confirmed. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(Principal District Judge),
Perambalur.

Copy to:

The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.M.Krishnamoorthy, Advocate sr.20808
+1cc to Mr.C.Vidhusan, Advocate sr.20793

C.M.A.No.2350 of 2011

spd(co)
nr 17/06/2019