



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.222 of 2015
and M.P.No.1 of 2015

The National Insurance Company Ltd.,
1st Floor, RVR Building, Kasramadai Road, Mettupalayam,
Coimbatore - 641 043. ... Appellant

Vs.

1.Ms.Tamaraiselvi @ Kavitha

2.Ms.Nanjammal

3.Palanisamy Gounder

4.G.Dhanpal ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.02.2013 made in M.C.O.P.No.63 of 2011, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Erode at Gobichettipalayam.

For Appellant : Mr.G.Udayasankar

For RR1 to 3 : Mr.K.Sudhakar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the award dated 27.02.2013 made in M.C.O.P.No.63 of 2011, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Erode at Gobichettipalayam.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.63 of 2011, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Erode at Gobichettipalayam. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of one Kandasamy, who died in the accident that took place on 04.12.2010. The Tribunal, considering the pleadings,



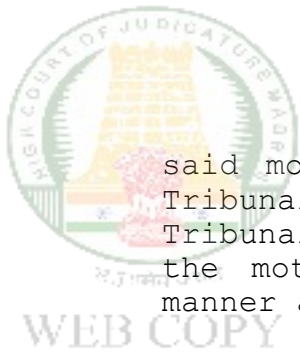
oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle in which the deceased travelled as a pillion rider and fixed negligence on the part of the driver of the motorcycle at 60% and on the part of the driver of the unknown vehicle at 40% and awarded a sum of Rs.8,43,000/- as compensation and directed the appellant-Insurance Company to pay 60% of the award amount i.e., Rs.5,05,800/- to the respondents 1 to 3. Against the said award dated 27.02.2013 made in M.C.O.P.No.63 of 2011, granting compensation to the respondents 1 to 3, the appellant-Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant contended that the Tribunal failed to consider the evidence of R.W.1 in its entirety. In FIR, it has been stated that the accident has occurred due to rash and negligent driving by the driver of the unknown vehicle, which dashed against the motorcycle and ran away without stopping. It is hit and run case. There is no negligence on the part of the rider of the motorcycle. In any event, the amount granted by the Tribunal towards loss of love and affection is excessive and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the rider of the motorcycle drove the motorcycle in a rash and negligent manner and dashed against the unknown vehicle and caused the accident. The accident has occurred only due to rash and negligent riding by the rider of the motorcycle. The Tribunal ought to have fixed entire negligence on the part of the rider of the motorcycle and directed the appellant to pay 100% of compensation awarded by the Tribunal. The Tribunal has awarded meagre amounts under different heads and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

6.From the materials available on record, it is seen that the respondents 1 to 3 have contended that the accident has occurred due to rash and negligent riding by the rider of the motorcycle, who drove the motorcycle at high speed and dashed against the unknown vehicle. They examined P.W.2 eyewitness to substantiate their case. The appellant except examining their official as R.W.1 has not examined any eyewitness to prove that the accident has occurred only due to rash and negligent driving by the driver of the unknown vehicle. The Tribunal considered the contents of FIR, final report and evidence of P.W.2 held that the rider of the motorcycle contributed 60% negligence for the accident and directed the appellant being insurer of the



said motorcycle to pay 60% of the compensation awarded by the Tribunal. There is no error in the said reasoning of the Tribunal, when P.W.2 has categorically stated that the rider of the motorcycle drove the motorcycle in a rash and negligent manner and dashed against the unknown vehicle.

7.As far as quantum of compensation is concerned, the Tribunal considering the age, avocation, income of the deceased and in the absence of any material, fixed notional income of the deceased at Rs.4,000/- per month. The Tribunal considering entire materials on record, awarded total compensation under different heads, which are not excessive warranting interference by this Court.

8.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.5,05,800/- awarded by the Tribunal as compensation to the respondents 1 to 3/claimants 1 to 3, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the above said award amount along 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. On such deposit, the respondents 1 to 3 are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

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To

Sub Assistant Registrar

1.The III Additional District Judge,
(Motor Accident Claims Tribunal),
Erode, Gobichettypalayam.

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

+1 cc to M/s.G.Udayasankar, Advocate, S.R.No.29000

+1 cc to M/s.K.Sudhakar, Advocate, S.R.No.29618

C.M.A.No.222 of 2015

VSN-II (CO)
SSM(21/08/2019)