

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2261 of 2015
and M.P.No.1 of 2015

Branch Manager
Oriental Insurance Co. Ltd.,
India Building, Post Box No.3821,
Trichy Road, Coimbatore-641 018. .. Appellant / 2nd Respondent

Vs.

1.Leelavathi
2.Nataraj ..Respondents 1 & 2/Petitioners

3.Subramaniam ..3rd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.12.2013 made in M.C.O.P.No.979 of 2010 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

For Appellant : Ms.C.Harini for
Mr.N.Vijayaraghavan

For RR1 to RR2 : Mr.MA.P.Thangavel

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 17.12.2013 made in M.C.O.P.No.979 of 2010 on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.979 of 2010, on the file of the Motor Accidents Claims Tribunal, II Additional District Court, Tiruppur. The respondents 1 and 2 filed the said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the death of their son viz., Suresh, who died in the accident that took place on 15.03.2010.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due

to rash and negligent driving by the rider-cum-owner of the motor cycle, the third respondent herein and directed the appellant-Insurance Company to pay a sum of Rs.7,29,000/- as compensation to the respondents 1 and 2 /claimants. Challenging the said award dated 17.12.2013 made in M.C.O.P.No.979 of 2010, the appellant-Insurance Company has come out with the present appeal.

4.The learned counsel appearing for the appellant-Insurance Company contended that the vehicle belonging to 3rd respondent was not involved in the accident. In the F.I.R originally it was referred to unknown vehicle involved in the accident and subsequently it has been referred that Bajaj Platinum Bike bearing Registration Number TN 65 H 2113. No reference was made to the vehicle of 3rd respondent. Subsequently the respondents 1, 2 and 3 in collusion have mentioned that the vehicle of 3rd respondent was involved in the accident. The complaint was referred to CB-CID and investigation is pending.

5.Per contra, the learned counsel for the respondents 1 and 2 contended that the 3rd respondent drove the vehicle in a rash and negligent manner and dashed against the deceased who died due to injuries, inspite of medical treatment. The respondents 1 and 2 have examined P.W.2/eye witness and proved that the accident occurred only due to rash and negligent driving by the 3rd respondent. R.W.2/Special Sub-Inspector of Police examined by the appellant has stated that after investigation he filed final report stating that the accident occurred only due to rash and negligent driving by the 3rd respondent. The Tribunal considered all the above facts and held that the accident occurred only due to rash and negligent driving by the 3rd respondent and there is no collusion between the respondents 1, 2 and 3 and prayed for dismissal of this appeal.

6.Heard the learned counsel appearing for the appellant as well as respondents 1 and 2 and perused all the materials available on record.

7.The main contention of the learned counsel for the appellant is that the vehicle belonging to the 3rd respondent was not involved in the accident but only by collusion between respondents 1 and 2, it has been stated that due to rash and negligent driving by the 3rd respondent, the accident occurred. The respondents 1 and 2 examined P.W.2/eye-witness, who deposed that the accident occurred only due to rash and negligent driving by the 3rd respondent. R.W.2/The Special Sub-Inspector of Police, who investigated the complaint has deposed that after examining the witness, final report was filed stating that the vehicle belonging to the 3rd respondent was involved in the accident. He has also filed Ex.R1/case history. The Tribunal

considering the evidence of P.W.2, R.W.2 and documents filed, held that the accident occurred only due to rash and negligent driving by the 3rd respondent. The respondents 1 and 2 contended that the deceased was working as tailor in Pradeepa Baniyan Company, Mummorthy Nagar, Tiruppur and was earning a sum of Rs.270/- per day. To substantiate the same, they examined P.W.3/co-worker. The Tribunal fixed notional income at Rs.6,000/- per month as no evidence was produced to substantiate that deceased was earning Rs.270/- per day except the evidence P.W.3/a co-worker. The Tribunal considering the age and avocation of the deceased awarded compensation under different heads and the same are not excessive warranting interference by this Court.

8.In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.7,29,000/- awarded by the Tribunal as compensation to the respondents 1 and 2/claimants is confirmed. The learned counsel appearing for the appellant-Insurance Company submitted that the appellant-Insurance Company has already deposited the entire award amount along with interest and costs to the credit of M.C.O.P.No.979 of 2010. The respondents 1 and 2/claimants are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

gbi/krk

Sub Assistant Registrar

To

1. II Additional District Judge,
Motor Accidents Claims Tribunal, Tiruppur.

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

+1 cc to M/s.Ma.P.Thangavel, Advocate, S.R.No.6177

+1 cc to M/s.N.Vijaya Raghavan, Advocate, S.R.No.6668

C.M.A.No.2261 of 2015
and M.P.No.1 of 2015

GP (CO)
SSM(30/09/2019).