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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 27.02.2019]

[PRONOUNCED ON : 08.07.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.447 of 2011

and

M.P.No.1 of 2011

The New India Assurance Co. Ltd.,
45, II Line Beach Road,
Moore Road, Chennai - 01. ... Appellant/2nd Respondent

.. Vs ..

1. K.Pavalakodi
2. P.Karnan
3. K.Vasanthi
4. K.Sathya ...R1 to R4/Claimants
5. M.Manoharan ...5th Respondents/1st Respondent
[5th respondent remained ex-parte and
notice dispensed with for him]

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 09.08.2010 made in M.C.O.P.No.4081 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant : Mr.M.Krishnamoorthy
For RR-1 to 4 : Mr.K.Suryanarayanan

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JUDGMENT

The Insurance Company is the appellant herein challenging the Judgment and Decree dated 09.08.2010 passed by the learned Chief Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai, in M.C.O.P.No.4081 of 2004, on the ground of liability and quantum.

2. The respondents 1 to 4, who are the legal representatives of the deceased namely, K.Parasuraman, have filed a claim petition in M.C.O.P.No.4081 of 2004 before the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes), Chennai, alleging that on 20.02.2004 at about 17.00



hours, when the deceased was travelling as a pillion rider in a motorcycle bearing Registration No.TN-07-AB-0583 along with his friend Saravanan and proceeding from Madhupattinam Kuppam to Chennai near Kadumbadi village in East Coast road, the rider of the motorcycle has driven the same in a rash and negligent manner endangering to the public safety and lost his control and hit against the opposite vehicle, which was coming towards Pondicherry from Chennai in East Coast road and as a result of which, the pillion rider died due to the multiple injuries sustained in the accident and the accident had occurred due to the rash and negligent riding of the rider of the motorcycle. The owner of the vehicle viz., fifth respondent herein remained ex-parte. On the side of the second respondent before the Tribunal/Insurance Company, permission petition under Section 170 of the Motor Vehicles Act was filed in M.P.No.6866 of 2009. In the FIR given by the father of the deceased viz., the second claimant, it was not stated that the accident was caused by the rider of the motorcycle bearing Registration No.TN-07-AB-0583. The police, who has investigated the matter, could not identify the vehicle, which had hit against the above said motorcycle, causing the accident and hence, the matter was closed as untraced.

3. On the death of the said K.Parasuraman, the first claimant/mother, second claimant/father and claimants 3 and 4/sisters of the deceased have filed the claim petition claiming a sum of Rs.10,00,000/- as compensation.

4. Before the Tribunal, on the side of the claimants, three witnesses were examined as P.Ws.1 to 3 and four documents were marked as Exs.P.1 to P.4. On the side of the respondents before the Tribunal, two witnesses were examined as R.Ws.1 and 2 and four documents were marked as Exs.R.1 to R.4.

5. The Tribunal, after considering both oral and documentary evidence adduced on either side, has held that the accident has taken place due to the rash and negligent driving of the rider of the two wheeler in which the deceased was travelled as a pillion rider and accordingly, awarded a sum of Rs.3,50,000/- as compensation with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. As against the said award passed by the Tribunal, the present appeal has been preferred by the insurance company.

6. Learned counsel appearing for the appellant/insurance company would contend that as per the police report, the accident has taken place due to the hit by the unknown vehicle and hence, the appellant/insurance company cannot be held liable to pay compensation to the claimants.



7. This Court heard the submissions made by the learned counsel appearing for respondents 1 to 4 herein/claimants and perused the records.

8. On a perusal of the records, it is seen that the claim petitioners have come forward with a specific case that the accident was occurred only due to the rash and negligent driving of the fifth respondent's vehicle and the rider of the two wheeler died on the spot. The fifth respondent herein, who is the owner of the vehicle, remained ex-parte both in the Tribunal and as well here.

9. The specific case of the appellant/insurance company being that the accident had not occurred as projected in the claim petition, but only due to the negligence of the opposite party of unknown vehicle. Reliance was placed upon R.W.1-private investigator appointed by the insurance company and R.W.2-Head constable attached to the Mamallapuram police station. Admittedly, both R.W.1 and R.W.2 are not the eye-witnesses to the occurrence. The only eye-witness, who was examined in this case before the Tribunal is P.W.2 alone.

10. On a perusal of the evidence of P.W.2, it is seen that he had deposed about the occurrence as stated in the claim petition also assumes significance. Besides P.W.2 is not relative of the deceased. Therefore, he is an independent witness. On a close scanning and scrutiny of the evidence of P.W.2, it reveals that the accident had occurred only due to the rash and negligent driving of the rider of the motorcycle.

11. Learned counsel appearing for the appellant/insurance company drawn my attention to Ex.R.3-Statement said to have been given by one Raghupathy. However, after perusing the deposition details of P.W.2, it is seen that the address of the deponent of Ex.R.3 and the witness-P.W.3 were totally different from each other.

12. It remains to be stated that when P.W.2 is in the witness box, he was not confronted with the above said document Ex.R.3-statement also assumes significance and goes against the appellant/insurance company. Furthermore, though the appellant/insurance company has now raised a point that P.W.2 is the author of the document Ex.R.3-statement, however to the dismay, P.W.2 was not confronted with the above said statement viz., Ex.R.3 during the cross-examination of P.W.2 to demonstrate that he is the author of Ex.R.3 and hence, taking into consideration the fact that the address of the person, who gave the statement under Ex.R.3 and the address and details of P.W.2 as seen in the deposition are found to be at variance and in the absence of any answer being elicited from P.W.2 during



the cross-examination regarding the aforesaid document Ex.R.3, this Court is of the considered view that the finding given by the Tribunal relating to P.W.2 that he is an independent witness has some credence of trustworthy to rely upon cannot be altered without any legal basis. Furthermore, even to go by the statement of Ex.R.3 what was stated appears to be only on the basis of hearsay. As observed supra, even the version of R.W.1-Private Investigator and R.W.2-Head Constable, cannot be relied upon, since they are not the eye-witnesses to the occurrence. In view of the above discussion, in the absence of any positive evidence to challenge the credibility of the evidence of P.W.2, this Court is of the considered view that the accident had occurred only due to the rash and negligent driving of the driver of the two wheeler which was insured with the appellant/insurance company and hence, the finding rendered by the Tribunal is hereby confirmed.

13. On the point of quantum, after hearing both the parties and also taking note of the fact that the Tribunal has adopted correct multiplier of 14 and also taken the notional income as Rs.4,000/- per month and after giving deduction of 50% with regard to the fact that the deceased was a bachelor, the decision arrived at by the Tribunal in awarding a sum of Rs.3,50,000/- as compensation is just and proper and it cannot be termed as exorbitant and hence, both the points viz., on the question of liability and the quantum urged by the appellant/insurance company are hereby negatived and hence, the appeal is liable to be dismissed.

14. In the result,

[i] the Civil Miscellaneous Appeal is dismissed and the award dated 09.08.2010 passed by the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai, in M.C.O.P.No.4081 of 2004, is confirmed.

[ii] If the award amount with accrued interest has not been deposited, the appellant-Insurance Company is directed to deposit the entire award amount with accrued interest at the rate of 7.5% per annum from the date of claim petition with costs, to the credit of M.C.O.P.No.4081 of 2004 on the file of the Motor Accidents Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

[iii] On such deposit being made, the respondents 1 to 4 herein/claimants are permitted to withdraw the entire award amount with



proportionate interest, in the same apportionment as apportioned by the Tribunal, less the amount already withdrawn, if any.

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[iv] Consequently, connected Miscellaneous Petition is closed.

[v] There shall be no order as to costs.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

To

1. The Chief Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

copy to

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

+1 cc to M/s.K.Suryanarayanan Advocate sr57085

+1 cc to Mr.Krishnamoorthy Advocate sr57003

C.M.A.No.447 of 2011

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