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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.573 of 2015

and

M.P.No.1 of 2015

M/s.Oriental Insurance Co. Ltd,
Divisional Office,
Suguna Buildings,
Avinashi Road,
Coimbatore.

... Appellant /3rd Respondent

Vs.

Mrs.K.Kasiammal (Deceased)

... /1st Petitioner

1.Mr.K.Kadiresan

2.Mr.K.Jayakumar

... 1st & 2nd Respondent/2 & 3 Petitioners

3.Mr.S.Rathinasamy

4.Mr.A.Muthusamy

.... 3rd & 4th Respondents/1 & 2 Respondents

5.Mrs.Sundari

6.Mrs.Dhanalakshmi

7.Mrs.Silitha

... 5 to 7 Respondents/4 to 6 Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.01.2013 made in M.C.O.P.No.53 of 2003 on the file of Motor Accident Claims Tribunal, IV Additional District & Sessions Court, Coimbatore.

For Appellant : Mr.J.Chandran

For RR1 & 2 : Mr.K.Ashok Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 18.01.2013 made in M.C.O.P.No.53 of 2003 on the file of Motor Accident Claims Tribunal, IV Additional District & Sessions Court, Coimbatore.

2.The appellant is the second respondent in M.C.O.P.No.53 of 2003 on the file of Motor Accident Claims Tribunal, IV



Additional District & Sessions Court, Coimbatore. Initially, one Kasiammal along with respondents 1 & 2 filed the said claim petition, claiming a sum of Rs.3,50,000/- as compensation for the death of her husband viz., Karuppusamy, who died in the accident that took place on 19.07.2002. Pending claim petition, the said Kasiammal died and her legal heirs were impleaded as respondents 5 to 7.

3. According to the respondents 1 and 2, on the date of accident i.e., on 19.07.2002 at 03.15 hours, while the deceased Karuppusamy was standing before the J.M.S. weigh bridge on the Coimbatore - Podanur Main Road near Kuruchi, a lorry belonging to the 4th respondent, which was driven by its driver / 3rd respondent in a rash and negligent manner, without any precautionary signals, dashed against the deceased Karuppusamy and he succumbed to his injuries on the same day. Therefore, the respondents 1 and 2 along with deceased Kasiammal have filed claim petition claiming compensation.

4. The respondents 3 & 4, owner and driver of the lorry, remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 & 2 in the claim petition and contended that the respondents 1 & 2 have failed to furnish the insurance particulars such as the policy number, period of insurance etc. The lorry was not insured with the appellant at the time of accident. The 4th respondent / owner of the lorry has not brought to the notice of the Insurance Company about the accident and the policy particulars, R.C., permit and driving license of the driver. Therefore, the appellant is not liable to pay any compensation to the respondents 1 and 2.

6. Before the Tribunal, 2nd respondent, son of the deceased examined himself as P.W.1, one Malik and Premnath, eye-witnesses to the accident were examined as P.W.2 and P.W.3 and marked nine documents as Exs.P1 to P9. On the side of the appellant, one Mohankumar, was examined as R.W.1 and marked four documents as Exs.R1 to R4. One Saravanabavan was examined as C.W.1.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 3rd respondent/driver of the lorry belonging to the 4th respondent and directed the respondents 3 and 4/driver and owner of the lorry as well as the appellant/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.3,19,000/- as compensation to the respondents.

8. Against the said award dated 18.01.2013 made in M.C.O.P.No.53 of 2003, granting compensation to the respondents



9. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal ought to have accepted the evidence of RW1 / officer of the Insurance Company and held that the 3rd respondent is not liable to pay compensation since the lorry was not insured with the appellant. The Tribunal followed indifferent procedure in examining Motor Vehicle Inspector and erroneously concluded that at the time of accident, the offending vehicle was insured with the appellant. In any event, the amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

11. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 & 2 and perused the materials available on record.

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examined C.W.1 to disprove the evidence of Motor Vehicle Inspector that the Insurance Policy was produced at the time of inspection. Considering the evidence of Motor Vehicle Inspector, the Tribunal concluded that the offending vehicle was insured with the appellant at the time of accident. The Tribunal has given cogent reasons for such conclusion. Therefore, the finding of the Tribunal does not warrant any interference by this Court.

13.As far as quantum of compensation is concerned, considering the entire materials on record, the total compensation awarded by the Tribunal is not excessive. The appellant/Insurance Company has not made out any case for interfering with the award of the Tribunal.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the amount of Rs.3,19,000/- awarded by the Tribunal as compensation to the respondents 1 and 2/claimants, along with interest and costs is confirmed. The respondents 3 and 4/driver and owner of the lorry as well as the appellant/Insurance Company are directed to deposit the award amount along with interest and costs jointly and severally, 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 and 2/claimants 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, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The IV Additional District & Sessions Judge,
Motor Accident Claims Tribunal, Coimbatore.

+lcc to Mr.J.Chandran, Advocate, S.R.No. 104993

+lcc to Mr.K.Ashok Kumar, Advocate, S.R.No. 105412

C.M.A.No.573 of 2015
and M.P.No.1 of 2015

CA (CO)
GN(12/08/2021)