

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.3758 of 2013

and

M.P.No.1 of 2013

M/s. ICICI Lombard General Insurance Company Limited,
Annamalai Nagar, Trichy - 18. ... Appellant/2nd Respondent

Vs.

1.Soodamani
2.Rajeshwari
3.Uma Maheshwari
4.Mohammed Haneefa
5.Ambujam ... Respondents
R-4 set exparte in lower court
R-5 Since died

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 25.09.2012 passed in M.C.O.P.No.108 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Ariyalur.

For Appellant : Mrs.R.Sree Vidhya
For R1 : Mr.K.Balu
For RR 2 to 4 : No appearance
R-4 exparte
R-5 Died

J U D G M E N T

The appellant / ICICI Lombard General Insurance Company Limited is the second respondent in M.C.O.P.No.108 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Ariyalur. The respondents 1 to 3 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.10,00,000/- for the death of one Rajendran, husband of the first claimant and father of the claimants 2 and 3 in a road accident on 25.04.2008.

2. The case of the claimants is that on 25.04.2008, the deceased Rajendran was riding his bicycle on Jayankondam - Chidambaram Main Road and at about 05.00 A.M., a speeding lorry bearing Registration No. TN 46 D 9958 hit the bicycle, as a

result whereof, he sustained fatal injuries and died on the spot. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the fourth respondent was the cause of the accident and that since the said lorry was insured with the present appellant / ICICI Lombard General Insurance Company Limited, the owner and the insurer of the lorry are jointly and severally liable to pay the compensation.

3. The learned Additional District Judge / Motor Accident Claims Tribunal, Ariyalur, after analysing the evidence on record, awarded a compensation of Rs.4,71,824/- together with interest at the rate of 7.5% per annum to the claimants and directed the ICICI Lombard General Insurance Company to pay the award amount. Questioning their liability to pay compensation to the claimants, the ICICI Lombard General Insurance Company has filed the present appeal under Section 173 of Motor Vehicles Act, 1988.

4. Mrs.R.Sree Vidhya, learned counsel appearing for the appellant / ICICI Lombard General Insurance Company contended that the lorry bearing Registration No. TN 46 D 9958 was not at all involved in the accident and the Police had falsely implicated the owner of the lorry / fourth respondent in the instant case. She further contended that in the First Information Report, where it is clearly stated that some unknown vehicle hit the deceased, the lorry bearing Registration No. TN 46 D 9958 was produced before the Motor Vehicle's Inspector, after a lapse of six months from the date of accident. Therefore, she prayed for setting aside the orders passed by the Tribunal.

5. Per contra, Mr.K.Balu, learned counsel appearing for the first claimant contended that the Tribunal after considering the oral and documentary evidence adduced on both sides, clearly held that the lorry belonging to the fourth respondent was actually involved in the accident and that therefore there is no reason to set aside the orders passed by the Tribunal.

6. A perusal of the records shows that though the Registration Number was not indicated in the First Information Report, the Inspector of Police, Meensurutti Police Station, Ariyalur after completing investigation laid a final report against the driver of the lorry, as evidenced by a certified copy of the final report (Ex.P3). In fact, no contra evidence was adduced by the appellant / ICICI Lombard General Insurance Company Limited to show that the lorry bearing Registration No. TN 46 D 9958 was wrongly implicated in the accident. Moreover,

the owner and the insurer of the lorry did not give any complaint before the higher Police officials in this regard. Further, the investigator of the Insurance Company (R.W.3) did not record the statements of the witnesses whom he had examined and therefore his report cannot be the sole ground to hold that the lorry bearing Registration No. TN 46 D 9958 was not involved in the accident. In the facts and circumstances, the order of the Tribunal fastening liability on the owner and the insurer of the lorry jointly and severally cannot be found fault with.

7. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection / appeal was filed by the claimants. A perusal of the award also shows that it is not on the higher side.

8. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The orders passed by the Tribunal is upheld.

(iii) The appellant / ICICI Lombard General Insurance Company Limited is directed to deposit the compensation awarded by the Tribunal i.e., Rs.4,71,824/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.108 of 2009 on the file of the Motor Accident Claims Tribunal / Additional District Court, Ariyalur, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the respondents 1 to 3 / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal, after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

सत्यमेव जयते
Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

The Motor Accidents Claims Tribunal,
The Additional District Court,
Ariyalur.

2.The Section Officer
VR Section
High Court Madras

+1 cc to Mr.K.Balu Advocate sr97210
+1 cc to M/s.R.Sree vidhya Advocate sr98097

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