IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1360 of 2018
and
C.M.P.No.10933 of 2018

Shriram General Insurance Co. Ltd.,
10003-E, 8 RIICO Industrial area,
Sitapura, Jaipur,
Rajasthan – 302 022 … Appellant/4th Respondent

Vs

1. Gandhi
2. Devan
3. Selvi
4. Durgalakshmi
5. Minor Manjunath ..Respondents 1 to 4/Petitioners
6. R. Sivaprakash ..Respondent 6/1st Respondent
7. Royal Sundaram Alliance Insurance Company Ltd.,
   represented by its Branch Manager,
   8/H1, Mangalam Building, Four Roads,
   Omalur Main Road, Salem – 636 0009.
   ..Respondent 7/2ND Respondent
8. M. Chandra ..Respondent 8/3rd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and Judgment made in M.C.O.P.No.59 of 2014 dated 10.11.2017 on the file of Motor Accident Claims Tribunal (Special District Court), Dharmapuri.

For Appellant	:	Mr.S. Dhakshnamoorthy
For R1 to R5	:	Mr.M.Selvam
For R6	:	Notice not ready
For R7	:	Mr.R.Rathina Thara

J U D G M E N T

The Civil Miscellaneous Appeal is preferred by the appellant/Shriram General Insurance against the decree and Judgment made in M.C.O.P.No.59 of 2014 dated 10.11.2017 on the file of Motor Accident Claims Tribunal (Special District Court), Dharmapuri, to set aside the same.

2.The brief facts of the case is as follows:

On 11.04.2011 at about 12.30 hours when the deceased was working as a cleaner in Maxx pickup van bearing Registration No.TN-29-Ad-3594 and he was travelling from Marandahalli to Vehhachandal road, near Vellichandai Masjid, the driver of the van drove the van at a high speed in a rash and negligent manner without following traffic rules and dashed behind a lorry bearing Registration No.KA-17-A-163. In the impact, the deceased who was sitting front side of the cabin in the van sustained bleeding injuries in the mouth and ear with blood clots over the face and died on the spot itself. Immediately he was taken to Government Hospital, palacode, to conduct postmortem. The legal heirs of the deceased have filed M.C.O.P.No. 59 of 2014 on the file of the (Special District Court), Dharmapuri, seeking compensation of Rs.20,00,000/-.

3. The appellant, who is the 4th respondent before the Tribunal has filed the counter statement denying the mode of the accident as stated by the claimants and further states that the negligence is on the part of the Mahindra Pick up van, who drove the same in a rash and negligent manner and invited the accident and also states that the compensation claimed is highly excessive.

4. The Tribunal upon consideration of the evidence available on record, has awarded a total compensation of Rs.8,77,200/- with interest at the rate of 7.5% per annum from the date of petition, to the respondents/claimants. Aggrieved against the same award and liability, the Insurance Company has preferred this appeal to set aside the same.

5. Heard Mr.S. Dhakshanamoorthy, learned counsel appearing for the appellant and Mr.M. Selvam and Mr.R. Rathinathan, learned counsel appearing for respondents and perused all the materials available on records.

6. In the grounds of appeal the appellant/Insurance Company is very much aggrieved against the liability as well as the quantum awarded by the Tribunal. The grievance raised by the

appellant is that the Tribunal went wrong in fixing entire negligence on the driver of the lorry insured with this appellant without considering the fact that the F.I.R was only against the driver of the pick up van and further the said pickup van hit behind the said lorry and the driver of the lorry has adduced evidence to corroborate the negligence on the part of the driver of the pick up Van. Hence, the negligence aspect is only on the driver of the pick up van, whereas the Tribunal has erroneously fixed the liability on the Insurer of the lorry and he contended that the sum awarded by the Tribunal under various heads are also not in consonance with the Judgment of the larger bench of the Hon'ble Apex Court in National Insurance Co. ltd., vs. Pranay Sethi and others.

7. It is seen from the records that initially the claim application before the Tribunal was filed only against the owner and the insurer of the van and at latter point of time the insurer and owner of the lorry were also impleaded as necessary parties.

8. With regard to the negligence aspect, it is seen from the records, the Tribunal elaborately discussed the evidence of R.W.2/ eyewitness to the accident. He has stated in the cross examination that the pick up van had passed through him and thereafter met with an accident. It was not stated by P.W.2 as to whether the lorry was proceeding on the left side of the road as whether the Pick up Van proceeded on the wrong side of the road, thereby the Tribunal has come to conclusion that in the pitch of darkness the accident having occurred on 01:30 hours with only a limited illumination, from the head light of the two wheeler, P.W.2 could not have clearly noticed the position of the lorry. Therefore, the evidence of R.W.2/eyewitness was not considered by the Tribunal. This Court is also conscious with the said observation of the Tribunal. Further, the Ex.R3/Rough Sketch would clearly show that the place of accident was on the left extreme of the road and from that, the van could not be found to have traversed in the wrong path. The evidence of R.W.1 Motor Vehicle Inspector Grade- I would also show that the damage was noted in the lorry on the rear left side. The pick up van had suffered damage in its front side. Based on the said evidences and documents it is clear that the first respondent who was proceeding ahead of the Mahindra pick up van would have applied brake and turned towards left without any signal or indication as it resulted the pick up van that followed the lorry dashing against the left rear side of the lorry. Hence, the Tribunal concluded that the accident occurred as a result of the negligence of the driver of the lorry. This Court finds no error in the said conclusion of the Tribunal in view of the evidence of documents.

9. The Tribunal has also observed the fact that the deceased was aged 21 years and in the absence of proof of income, his notional monthly income was fixed at Rs.6,500/- per month and he would have contributed 50% to his family members and hence 1/2nd was deducted towards personal expenses and takenRs.3,250 and applied "18" multiplier and calculated the pecuniary loss at Rs.7,02,000/- . The Tribunal further observed that there are five members in the family of the deceased hence Rs.25,000/- was awarded for each member and thereby awarded Rs.1,25,000/-(Rs.25,000/- x 5) under the head loss of love and affection and Rs.25,000/- towards funeral expenses and Rs.25,000/- towards transport expenses. In view of the entire evidence as well as the documents placed before the Tribunal, the compensation awarded to the claimants are reasonable and proper and does not require any interference by this Court.

10. In view of the above discussions, the award passed by the Tribunal is confirmed. This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

11. The appellant/Transport Corporation shall deposit the entire compensation amount, along with interests and costs, as awarded by the Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the respondents are permitted to withdraw their respective share amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

12. At this juncture, it is submitted that the minor claimant/5th respondent herein would have attained majority by now. Hence, on such application being taken out, the Tribunal is directed to transfer the deposited amount to the savings Bank Account of the claimant/5th respondent herein, within one week, through RTGS, else the compensation amount shall be deposited in any one of the Nationalized Banks till be attains majority and the interest accrued theron shall be withdrawn by the guardian of the minor claimant, once in three months, directly from the bank, under intimation to the Tribunal.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To.

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

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

+1cc to Mr.S. Dhakshnamoorthy, Advocate SR.No.65376

+1cc to Mr.M.Selvam, Advocate SR.No.65592

+1cc to Mr.R.Rathina Thara, Advocate SR.No.66189

C.M.A.No.1360 of 2018
and
C.M.P.No.10933 of 2018

SVI(CO)
GMY(01/10/2019)