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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.1866 OF 2018 AND
C.M.P.NOS.14396 OF 2018 AND 3486 OF 2019

M/s.The National Insurance Company Limited,
Office at 2nd floor, Maruthi Complex,
Meyanoor Road,
Salem - 4.

.. Appellant/R2

Vs.

1.H.Akthar John

2.M.Mahaboob Sheriff

3.M.Javeed Sheriff

4.M.Abith Sheriff

.. RR1 to 4/Petitioners

5.M.Chinnarasu

.. R5/R1

PRAYER:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.03.2017 made in M.C.O.P.No.900 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

For Appellant : Mrs.N.B.Surekha
For RR1 to 4 : Mr.A.Babu for
Mr.S.Gunalan
R5 : Not Ready Notice

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the award dated 14.03.2017 made in M.C.O.P.No.900 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.



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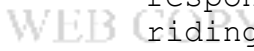
2.The appellant is the second respondent in M.C.O.P.No.900 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. The respondents 1 to 4 filed the above said claim petition claiming a sum of Rs.40,00,000/- as compensation for the death of one Mohammed Sheriff, who died in the accident that took place on 04.04.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the fifth respondent and directed the appellant-Insurance Company, being the insurer of the vehicle to pay a sum of Rs.13,17,810/- as compensation to the respondents 1 to 4 / claimants at the first instance and recover the same from the fifth respondent, the owner of the vehicle.

4.Against the said award dated 14.03.2017 made in M.C.O.P.No.900 of 2013, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing negligence on the part of the rider of the motorcycle only relying on the evidence of son of the deceased and F.I.R. The Tribunal failed to see that no independent evidence was examined by the respondents 1 to 4. The Tribunal erred in ordering pay and recovery in the absence of driving license. The Tribunal erred in fixing monthly income of the deceased based on the pension amount and the pension amount cannot be treated as income of the deceased. The respondents 2 to 4 are aged 35,33 and 25 years respectively and they are not dependents of the deceased and the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

6.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the respondents 1 to 4 proved that accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the fifth respondent. The appellant did not let in any evidence to disprove the evidence of P.W.2 and F.I.R. In the absence of contra evidence to the evidence of P.W.2 and F.I.R., the Tribunal rightly fixed negligence on the part of the rider of the motorcycle and there is no error in the above finding. The monthly income fixed by the Tribunal and total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.



8. From the materials available on record, it is seen that respondents 1 to 4 have contended that while the deceased was riding his TVS Scooty, the rider of the motorcycle belonging to the fifth respondent drove the motorcycle in a rash and negligent manner and dashed against the TVS Scooty, in which the deceased traveled. Due to the said impact, the deceased fell down and sustained fatal injuries. P.W.2, who was going behind the deceased in another vehicle deposed the manner of the accident and F.I.R. was lodged against the rider of the motorcycle belonging to the fifth respondent. The appellant has not let in any evidence to disprove the evidence of P.W.2 and F.I.R. The Tribunal held that accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to the fifth respondent. At the time of accident, the rider of the motorcycle did not possess driving license. The Tribunal considering the same, ordered pay and recovery. There is no error in the above findings of the Tribunal warranting interference by this Court.

10. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.13,17,810/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. The appellant-Insurance Company is directed to deposit the award amount at the first instance and recover the same from the owner of the vehicle, the fifth respondent, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.900 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem. On such deposit, the respondents 1 to 4 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, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

krk

To

1. The Special District Judge,
Motor Accidents Claims Tribunal,
Salem.
2. The Section Officer,
VR Section, High Court,
Madras.

+lcc to Mrs.N.B.Surekha, Advocate, S.R.No.31371

+lcc to Mr.S.Gunalan, Advocate, S.R.No.31218

C.M.A.No.1866 of 2018 and
C.M.P.Nos.14396 of 2018 and 3486 of 2019

EV(CO)
CS/03/12/2019