

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.65 OF 2001
AND
C.M.P.NO.1337 OF 2001

1. Rajaram
2. M/s.United India Insurance Co, Ltd.,
Tiruvannamalai.

...Appellant/
Respondents 2 & 3

Vs

- 1.Thenmozhi
- 2.Vijayarasan
- 3.Anitha
- 4.Minor Balaji
rep.by the first respondent

- 5.Pattammal

...Respondents 1 to 5/
Petitioners 1 to 5

- 6.The Managing Director,
Pattukottai Alagiri Transport
Corporation Ltd., Vellore.

.. R6 & 1st Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and decree dated 02.08.1999 made in M.C.O.P.No.386 of 1997 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Tiruvannamalai.

For Appellant : Mr.R.Sreevidhya
For Respondents 1 & 2 : No Appearance
R3 & R5 : Died

JUDGMENT

This appeal has been preferred against the judgment and decree dated 02.08.1999 made in M.C.O.P.No.386 of 1997 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Tiruvannamalai, wherein the Tribunal has fixed the negligence at 50% each on the part of the appellants herein, who are the insured and the insurer of the two wheeler involved in the accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 30.11.1996, the deceased Sundaram

was proceeding in the motorcycle bearing Registration No.TN-25-8586 from Vellore to Thiruvannamalai. When the motorcycle reached near Venkinel lake, the bus belonging to the 6th respondent herein driven by its driver in a rash and negligent manner, dashed against the motorcycle. Due to the impact, the deceased sustained fatal injuries and died on the spot. The legal heirs of the deceased filed a claim petition before the Tribunal. On a consideration of the materials and evidence available on record, the Tribunal has arrived at the total compensation of Rs.1,80,000/- with interest at the rate of 12% p.a., from the date of petition. Giving a finding that both the driver of the bus as well as the rider of the motorcycle are responsible for the accident, the Tribunal fixed 50% liability on the part of the Transport Corporation and another 50% liability on the part of the owner of the motorcycle and the Insurance Company.

3.Challenging the same, this Civil Miscellaneous Appeal has been filed by the owner and the insurer of the motorcycle.

4.The learned counsel for the second appellant Insurance Company has submitted that the accident had occurred only due to the negligent and irresponsible driving of the driver of the bus. She further submitted that 50% negligence fixed on the appellants is incorrect.

5.Despite service of notice and the name of the respondents 1 and 2 having been printed in the cause list, there is no representation on their behalf. Further, the appellants have not taken proper steps to bring on record the legal heirs of the deceased respondents 3 and 5. However, due to paucity of time, this Court is inclined to proceed with this appeal on merits.

6.Heard the learned counsel for the appellant Insurance Company and perused the materials available on record carefully and meticulously.

7.Before the Tribunal, the wife of the deceased was examined as P.W.1 and the owner of the vehicle was examined as P.W.2. P.W.2/eye witness to the accident, deposed that he was not definite as to whether the rider of the two wheeler tried to overtake the bus or not. It is seen from the report of the Motor Vehicle Inspector/Ex.P.2 that there was no engine problem in the alleged vehicle at the time of accident, which is being supported by the deposition of R.W.1. In any case, the deposition of the eye witness to the occurrence will be given paramount importance. Hence the Tribunal, relying upon the same and other relevant materials, came to the conclusion that both the rider of the motorcycle and the driver of the bus were responsible for the accident and accordingly fastened 50%

liability on the part of the owner of the two wheeler and the insurer of the two wheeler and 50% on the 6th respondent/ Transport Corporation. The findings rendered are based on proper analysis of the materials and evidence and hence the same does not require any interference by this Court.

8. With regard to the quantum of compensation, the Tribunal has awarded a sum of Rs.1,80,000/- towards loss of income fixing the monthly income of the deceased at Rs.1,500/- in the absence of any documentary evidence to prove that he was earning a sum of Rs.4,500/- per month as driver as claimed by the claimants, deducting 1/3rd of the amount towards his personal expenses and adopting the multiplier of 15. The Tribunal has correctly considered the materials and evidence, adopted the correct multiplier and awarded Rs.1,80,000/- towards loss of income, to the claimants and hence the same is confirmed.

9. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellants are directed to deposit the compensation amount with interest and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. The fourth respondent minor would have attained majority by now. Hence, on such deposit being made, the respondents 1 to 5/claimants are permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk/smn
To

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

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.71543

C.M.A.No.65 of 2001
and C.M.P.No.1337 of 2001

KK(CO)
CS/09/02/2021