IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM:
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3252 of 2019
and
C.M.P.No.18658 of 2019

Branch Manager
HDFC ERGO General Insurance Co. Ltd.,
1st Floor, 165-166, Backbay Reclamation,
H.T.Parekh Marg, Church Gate,
Mumbai. ... Appellant

Vs.

1.Subbathal

2.Thangaraj

3.Senthilkumar

4.Unnathal

5.Mahendran

6.Selvam ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2019 made in M.C.O.P.No.1512 of 2017 on the file of Motor Accident Claims Tribunal cum II Additional District and Sessions Court, Tiruppur.

For Appellant : Ms.G.P.Bhargavi

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 31.01.2019 made in M.C.O.P.No.1512 of 2017 on the file of Motor Accident Claims Tribunal cum II Additional District and Sessions Court, Tiruppur.

2.The appellant/Insurance Company is 3rd respondent in M.C.O.P.No.1512 of 2017 on the file of Motor Accident Claims Tribunal cum II Additional District and Sessions Court, Tiruppur. The respondents 1 to 4 filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of one Subramaniam, who died in the accident that took place on 18.07.2017. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 6th respondent/driver of the Tata Ace Van belonging to the 5th respondent and directed the appellant/Insurance Company to pay a sum of Rs.11,75,000/- as compensation to the respondents 1 to 4, at first instance and recover the same from the 5th respondent/owner of the vehicle. Against the said award dated 31.01.2019 made in M.C.O.P.No.1512 of 2017, granting compensation to the respondents 1 to 4, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant contended that the award of the Tribunal is not supported by any evidence, since no proof of income of the deceased was furnished. The Tribunal failed to take note of the fact that no proof was produced to prove the age of the deceased as 67 years. Further with regard to the statement that the deceased was running a shop by name 'Somanur Fashion Silks', also no evidence was produced. Hence it is the contention of the appellant that in the absence of any documents to show that the deceased is the owner of the said shop, the income taken by the Tribunal at Rs.20,000/- is without any basis. The Tribunal has awarded huge compensation at Rs.11,75,000/- which is not supported by any acceptable evidence and if the said compensation is awarded on sympathetic grounds, the same cannot be justified and more than an amount of Rs.5,20,000/- cannot be given on the facts and circumstances of the case. Hence prayed to set aside the award of the Tribunal.

4.Heard Ms.G.P.Bhargavi, learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

5.From the materials available on record, it is seen that the accident occurred on 18.07.2017 at about 01.00 PM, the deceased was riding the two wheeler bearing Reg.No.TN-37-CX-3883 at the extreme left of the road. At that time the Tata Ace Van bearing Reg.No.TN-28-AH-4008 came in a rash and negligent manner dashed against the two wheeler and the deceased sustained injuries and was taken to Royal Care Hospital, Coimbatore, inspite of the effective treatment, he died and the claimants being legal heir, have preferred the claim application claiming a sum of Rs.50,00,000/- as compensation for the death of one Subramaniam.

6.The Insurance Company before the Tribunal in their counter statement denied the mode of accident, and further contended that the deceased who had ride the two wheeler bearing Reg.No.TN-28-AH-4008 did not possess valid driving license at the time of accident and hence he contributed to the accident by his negligent driving. Further contended that the sum claimed under various heads are also excessive.

7.On perusal of the evidence and documents, especially the evidence of PW1 and also contents of the FIR, which it has been stated that the rider of the vehicle bearing Reg.No.TN-28-AH-4008 had driven the same in a rash and negligent manner and caused the accident. A case also registered by the Karumatthampatty Police in Cr.No.320/2017 dated 19.07.2017. it is seen that in support of the arguments of the respondents 1 to 4 that the deceased was running a shop by name 'Somanur Fashion Silks', was filed to prove the income.

8. With regard to the negligence, the tribunal has observed that the deceased who ride the two wheeler bearing Reg.No. TN 37-CX-3883 and involved in the accident did not possess the valid driving licence, which is purely violation of policy conditioins. Even though, the owner of the said vehicle had violated the policy conditions and liable to pay the compensation as per the terms and conditions of the policy, the tribunal by considering the fact that the owner had paid for the coverage of thrity party insurance, directed the Insurance company to pay the compensation to the claimants at the first instance, since, the deceased who ride the two wheeler comes under the coverage of third party insurance. In view of the above observation, challenging the liablity by the appellant/insurance company cannot be considered. With regard to the compensation awarded by the tribunal, since the determination of compensation was based on the documents and evidence, this Court is not inclined to interefere with the compensation awarded by the tribunal.

9. Though the Insurance company/appellants herein have relied upon the Exhibits R3 & R4, which speaks that inspite of notice, neither the owner of the vehilce nor rider of the vehicle have produced the licence, the tribunal by

considering the fact that the decceased who is a third party, should not suffer from any of the formalities, directed the Insurance company to pay the compensation at the first instance and recover the same from the owner of the vehilce, which is quite proper and reasonable.

10. In view of the above, the judgment and decree passed by the tribunal, directing the Insurance Company/appellant herein to pay the compensation at the first instance and recover the same from the owner of the vehicle is confirmed.

11.In the result, the Civil Miscellaneous Appeal is dismissed and sum of Rs.11,75,000/- awarded by the Tribunal as compensation to the respondents 1 to 4/claimants 1 to 4, along with interest and costs is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.The appellant/Insurance Company is directed to deposit the award amount with interest and costs, at first instance and recover the same from the 5th respondent/owner of the vehicle, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1512 of 2017. On such deposit, the respondents 1 to 4 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.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mtl
To
1.The II Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,Tirupppur.

Copy to
The Section Officer,
V.R. Section,High Court, Madras.
+1cc to Mr.G.P.Bhargavi , Advocate SR.No. 10656

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and
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A.SK(06/09/2019)