

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1445 of 2017

and

CMP.No.7650 of 2017

The National Insurance Co. Ltd.,
Divisional Office - I,
LRN Complex,
Saradha College Road,
Salem - 7.

.. Appellant/2nd Respondent

Vs.

1. A.Maheswari
2. Pappathi
3. K.Vijay

.. Respondents/Petitioners 1 & 2,
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.07.2016 made in M.C.O.P.No.1850 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District - Judge) at Salem - District.

For Appellant : Mr.J.Chandran

For R1 & R2 : Mr.S.P.Yuvaraj

J U D G M E N T

This appeal arises out of the order and decree dated 20.07.2016 passed by the Motor Accident Claims Tribunal (Special District Judge) Salem, in MCOP.No.1850 of 2013.

2.The case in brief is as follows:

On 08.01.2012 about 9.45pm, one Dhanasekaran and his friend Rangaraj were proceeding in a motor cycle viz., TVS Santra bearing Registration No.TN-31-L-8644 from Belur to Valapady. When they were nearing Saradha Petrol Bunk, a Tractor bearing Registration No.TN-27-Q-1630, belonging to the third respondent

and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the motorcycle, as a result of which, the said Dhanasekaran sustained grievous injuries and died on the spot. Hence, the respondents 1 & 2, who are the legal heirs of the deceased Dhanasekaran, filed a claim petition, seeking a sum of Rs.25,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.10,05,000/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant insurance company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant insurance company submitted that the accident had occurred solely due to the carelessness and negligent act on the part of the deceased and the driver of the tractor was acquitted from the criminal proceedings. However, the Tribunal has erred in coming to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tractor. The learned counsel further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the respondents 1 & 2 / claimants submitted that the Tribunal has correctly considered the materials and evidence available on record and has awarded the compensation and hence, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 & 2 / claimants and perused the materials available on record carefully and meticulously.

6.As regards the finding of the Tribunal on negligence, P.W.2/Rangaraj who was the eyewitness to the accident, has stated that on 8.1.2012, while he was a pillion rider in the motorcycle, the driver of the Tractor drove the vehicle in a rash and negligent manner and dashed against the motorcycle; due to the said impact, the deceased Dhanasekaran, who was the rider of the motorcycle, sustained head injury by hitting on the side angle of the tractor; and hence, the driver of the tractor was responsible for the accident. The testimony of P.W.2 was corroborated by Exs.P1-FIR and P5-charge sheet. On the contrary, it was put forth on the side of the appellant insurance company that the deceased himself invited the accident, due to his carelessness and negligence, by hitting on the side angle of the vehicle. To substantiate the same, they examined the driver of the Tractor involved in the accident as R.W.1, according to whom, the deceased was responsible for the accident; and produced a copy of the judgments passed by the Judicial Magistrate No.VI, Salem in CC No.135 of 2012 and STC No.466 of

2012 as Exs.R1 and R2, wherein, the driver of the Tractor was acquitted from the charges framed against him. However, the Tribunal, after observing that the Criminal Court acquitted the driver of the Tractor on ground of benefit of doubt, has right rejected the contention so made by the appellant insurance company and accepted the claim of the claimants, placing reliance of P.W.2 coupled with Exs.P1 and P5 and ultimately come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Tractor, which finding this Court is not inclined to interfere.

7. With regard to the quantum of compensation, P.W.1/mother of the deceased, has in her evidence, deposed that the deceased was aged about 30 years and was earning a sum of Rs.1,50,000/- per month as a driver in Dubai. However, no authenticated proof was produced to substantiate the same. Hence, the Tribunal has fixed the monthly income of the deceased at Rs.10,000/-, after deducting 1/2nd towards his personal expenses, arrived at the annual income at Rs.60,000/-, adopted the multiplier of 16 and quantified the compensation under the head "loss of income" at Rs.9,60,000/-. The Tribunal has correctly assessed the income of the deceased, adopted the correct multiplier and awarded Rs.9,60,000/- towards the contribution of the deceased to the family and hence, the same is hereby confirmed.

7.1 That apart, the Tribunal has awarded Rs.25,000/- towards funeral expenses, Rs.10,000/- each towards loss of love and affection to the mother and sister of the deceased, which, in the opinion of this Court, are just and reasonable and hence, the same need not be interfered.

8. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant Insurance Company is directed to deposit the entire compensation amount, as awarded by the Tribunal, with interest and costs, 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 Tribunal shall transfer the respective shares of the award amount to the savings bank accounts of the respondents 1 & 2/claimants as per the ratio of apportionment made by the Tribunal, through RTGS within a period of one week thereafter. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Salem District.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.85178

+1cc to Mr.S.P.Yuvaraj, Advocate SR.No.84114

C.M.A.No.1445 of 2017
and
CMP.No.7650 of 2017

KK(CO)
GMY(23/01/2020)