

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1451 of 2017
and C.M.P.No.7711 of 2017

United India Insurance Co.Ltd.,
Divisional Office-I,
104-A, Peramanur Main Road,
Salem-636 007.

... Appellant /Respondent No.2

Vs.

1.Vasantha

2.Dhanapal

3.Illamvazuthi

...1st Respondent/2nd Respondent/Petitioners

...3rd Respondents/1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 20.09.2016 made in MCOP No.809 of 2013 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Salem District.

For Appellant : Mr.J.Chandran

For Respondents: Mr.S.P.Yuvaraj for R1 and R2

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.5,00,000/- towards compensation to the respondents 1 and 2, due to the death of their son in a motor vehicle accident.

2.The case in brief, is as follows:

On 27.10.2012 at about 17.30 hours, the deceased Murugan along with his friends, was playing at Salem Camp Gandhi Nagar near Ambethkar Maidanam. At that time, the tipper lorry bearing Reg.No. TN-52-Z-5977, belonging to the third respondent herein and insured with the appellant Insurance Company, came in a rash and negligent manner at uncontrollable speed and dashed against the deceased. Due to the said impact, the deceased sustained head injury and grievous injuries all over the body. He was taken to the Government Hospital, Mettur and he was declared

dead in the hospital. The father and mother of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.20,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.5,00,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the tipper lorry, since the fact remains that the accident had occurred only due to the negligence on the part of the deceased. He has not disputed the quantum of compensation awarded by the Tribunal.

5.The learned counsel for the respondents 1 and 2 / claimants has submitted that the Tribunal has considered all the materials and evidence available on record and has rightly awarded the compensation which is just and reasonable, and hence the judgment of the Tribunal need not be interfered with by this Court.

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

7.Since the quantum of compensation is not disputed, this Court is not inclined to interfere with the same.

8.With regard to negligence, it is the submission of the learned counsel for the appellant Insurance Company that even as per the statement given by the father of the deceased under Section 161 Cr.PC, the deceased climbed the lorry in a playing mood and fallen down from the top of the lorry, without the knowledge of the driver, and only because of the same, the accident had occurred. In this connection, he relied upon Ex.P4-Charge Sheet. But it is seen that the appellant has not produced any proper documentary evidence in support of their claim before the Tribunal. As per Ex.P1-First Information Report, when the deceased was playing along with his friends, the lorry in question came in a rash and negligent manner and dashed against him. As per the evidence of P.W.2-Arumugam, eye-witness to the occurrence, when he was proceeding in his two-wheeler in the Gandhinagar Road at about 05.30 p.m. on the date of accident, he saw the deceased proceeding towards Salem Camp Road and at that

time, the lorry in question suddenly came from Salem Camp Road towards Gandhinagar Road and dashed against the deceased in a fraction of a second and due to the same, the deceased sustained grievous injuries and was lying in the road in unconscious condition. The lorry driver, who was examined as R.W.1 before the Tribunal, deposed before the Tribunal that he was not aware of the accident and he only got an information that the deceased was travelling by hanging on the back side of the lorry and thereafter he had fallen down. Considering the materials and evidence available on record, the Tribunal observed that the deposition of P.W.2 that the deceased, who was a 10-year old boy, travelled in the lorry by hanging, cannot be accepted and accordingly, fixed the negligence on the part of the driver of the tipper lorry. This Court has perused the Post Mortem Certificate of the deceased. It is seen from the Post Mortem Certificate that the deceased sustained fracture of parietal and temporal bones in the scalp area. It is also seen that sterno clavicular joint dislocated on the right side and he sustained many injuries and those injuries are grievous in nature. Normally, these types of grievous injuries would be caused only due to the dashing of heavy vehicles and not just on account of falling from a lorry. In the circumstances, this Court deems it fit to confirm the finding rendered by the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the tipper lorry.

9. In view of the foregoing, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

10. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2 / claimants are permitted to withdraw the same, on making proper application before the Tribunal.

सत्यमेव जयते
Sd/-

Assistant Registrar (AD-IV)

//True Copy//

Sub Assistant Registrar

KM
To

1. The Presiding Officer, Motor Accidents Claims Tribunal
(Special District Judge)
at Salem District.

+1cc to Mr.SP.Yuvaraj, Advocate SR.79068

C.M.A.No.1451 of 2017
and C.M.P.No.7711 of 2017

KJ (CO)
CB(10/03/2020)



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