IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.1491 of 2017
and
CMP.Nos.8006 of 2017 & 13771 of 2018

The Branch Manager,
ICICI Lombard General Insurance
Company Ltd.,
Arihant Plaza, I[st] Floor,
TN.83/84, Valtax Road,
Chennai - 3. ... Appellant/2[nd] Respondent

/Vs/

1.G.Srilakshmi ... 1[st] Respondent/Petitioner

2.Harinivas ... Respondent-1/Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 04.10.2016 made in MCOP.No.733 of 2014 on the file of the Motor Accident Claims Tribunal-cum- III Additional District Court, Thiruvallur at Poonmallee.

For Petitioner : Mr.K.K.Ramakrishnan

For R1 : Mr.R.Karthick Sevugaperumal

For R2 : Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company Limited, challenging the Judgement and Decree dated 04.10.2016 made in MCOP.No.733 of 2014 on the file of the Motor Accident Claims Tribunal-cum- III Additional District Court, Thiruvallur at Poonmallee.

2.The first respondent is the claimant in M.C.O.P.No.733 of 2014 on the file of the Motor Accident Claims Tribunal cum III

Additional District Court, Thiruvallur at Poonamallee. She has filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one G.Raghuramaiah, who died in the accident that took place on 03.03.2011. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Pulsar Motor cycle belonging to the second respondent and as the insurer, the appellant is liable to pay the compensation to the first respondent and awarded a sum of Rs.7,68,200/- as compensation to her. Against the said award dated 04.10.2016 made in M.C.O.P.No.733 of 2014, the appellant/Insurance Company has come out with the present appeal challenging the award fastening the liability on them.

3.According to the learned counsel appearing for the appellant/Insurance company, the accident occurred only due to rash and negligent driving by the deceased, who was under the influence of alcohol at the time of the accident and that, an FIR was registered only against the deceased. After investigation, a final report was filed closing the case as mistake of fact. PW.2 is not an eye witness. He came to the scene of occurrence only after the accident. The Tribunal erred in fixing the negligence on the part of the second respondent and holding that PW.2 was an eye witness to the accident. The Tribunal also failed to consider that the deceased was under the influence of alcohol at the time of the accident. The Tribunal rejected the evidence of RW.1 on the ground that he was not an eye witness and by applying a different yardstick, accepted the evidence of PW.2, who was also not an eye witness. The Tribunal ought not to have rejected the evidence of RW.1 as well as PW.2 and prayed for allowing the present Civil Miscellaneous Appeal.

4.Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

5.Though the first respondent entered appearance through counsel, when the matter is taken up for hearing, there is no representation for the first respondent.

6.Though the learned counsel appearing for the appellant/Insurance Company contended that the accident had not occurred due to rash and negligent driving by the driver of the second respondent and that, FIR was registered only against the deceased and the deceased was under the influence of alcohol, from the materials available on record, it is seen that the FIR was lodged against the deceased on the basis of the complaint given by the second respondent, who was the rider of the other motorcycle. The second respondent did not appear before the Tribunal and let in any evidence to substantiate the contention in the FIR. RW.1 was not an eye witness. Similarly, PW.2 was in the scene of occurrence only after the accident. The contention is that he was at the scene of occurrence and he took the deceased to the hospital for treatment. In such circumstances, the findings of the Tribunal, considering the evidence of PW.2 as an eye witness, is not erroneous. The appellant / Insurance company failed to prove that the deceased was under the influence of alcohol at the time of the accident. The Tribunal has considered all the above facts and held that the accident occurred only due to rash and negligent driving by the driver of the second respondent. In view of the same, there is no reason warranting interference by this Court with the said finding of the Tribunal. The amounts awarded by the Tribunal under different heads are not excessive.

7.In the result, the Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with accrued interest and costs, less the amount deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the entire award amount, less the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

klt/sms

To

1. The Motor Accident Claims Tribunal-cum-
III Additional District Court,
Thiruvallur, Poonmallee.

2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.K.K.Ramakrishnan, Advocate Sr.No.4427

CMA.No.1491 of 2017
and CMP.Nos.8006 of 2017 & 13771 of 2018

CNR(CO)
CSL/11.04.2019