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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1818 of 2017

and

C.M.P.Nos.11806 of 2018 & 9731 of 2017

ICICI Lombard General
Insurance Company Limited
No.414, Veer Savarkar Marg,
Near Siddi Vinayak Temple,
Prabhadevi, Mumbai-400 025.

..Appellant

Vs

1.Akkammal
2.Ganesan
3.Lenin
4.Jayanthi

5. M/s.Namakkal Transport Carriers (P) Ltd.
Having office at
NTC Towers, No.18, New No.39
Linghi Chetty Street,
First Floor,
Chennai-600 001.

..Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.07.2015 made in M.C.O.P.No.1983 of 2014 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellant : Mrs.R.Sree Vidhya

For RR1 to R4 : Mr.V.R.Annagandhi

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 13.07.2015 made in M.C.O.P.No.1983 of 2014 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri.



2.The appellant is second respondent in M.C.O.P.No.1983 of 2014 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri. The respondents 1 to 4 filed the above claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Suresh, who died in the accident that took place on 28.02.2012. 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 lorry belonging to the fifth respondent and directed the appellant-Insurance Company being the insurer of the lorry to pay a sum of Rs.10,27,000/- as compensation to the respondents 1 to 4.

3.Challenging the said award dated 13.07.2015 made in M.C.O.P.No.1983 of 2014, the appellant-Insurance Company has come out with the present appeal.

4.The learned counsel appearing for the appellant contended that the Tribunal erred in not accepting the closure report and evidence of R.W.1/Special Sub-Inspector of Police who investigated the case. The Tribunal failed to see that the F.I.R was lodged only against the deceased and the police officer is discharging in his duty will not favour the driver against the victim when he was aged 34 years at the time of death. The reason given by the Tribunal for not accepting the evidence of R.W.1 and documents Exs.R1 to R3 are erroneous. In any event, the Tribunal ought to have fixed contributory negligence on the part of the deceased. The amounts awarded by the Tribunal are excessive and prayed for setting aside the award of the Tribunal.

5.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the driver of the lorry belonging to fifth respondent drove the lorry in a rash and negligent manner and suddenly stopped the lorry in the middle of the road and due to that, deceased, who was coming behind the lorry dashed against the back side of the lorry and he sustained injuries and died. F.I.R. was lodged by the driver of the lorry, when the deceased was taken to hospital. The respondents 1 to 4 have examined P.W.2/eye witness and proved their contention. The appellant has not examined the driver of the lorry to disprove the contentions of the respondents 1 to 4. The Tribunal considered the evidence let in by the respondents 1 to 4 and accepted the same and rejected the evidence of R.W.1 by giving valid reason. The amounts awarded by the Tribunal is excessive and prayed for dismissal of the appeal.



6. Heard the learned counsel appearing for the appellant as well as the respondents 1 to 4 and perused the materials available on record.

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7. From the materials available on record, it is seen that it is the contention of the respondents 1 to 4 that the accident occurred only when the driver of the lorry suddenly stopped the vehicle in the middle of the road without any signal. To prove their contention, the respondents 1 to 4 examined P.W.2/an eyewitness. The Tribunal considering the evidence of P.W.2 and cross examination by counsel for appellant, held that no favourable answer was elucidated from the cross examination of P.W.2. The appellant has not examined the driver of the lorry who is the most competent witness to depose the manner of the accident. Further, the driver of the lorry only lodged the complaint. The appellant has not examined any independent witness to disprove the contention of the respondents 1 to 4 that the accident occurred only due to rash and negligent act of the driver of the lorry.

8. As far as evidence of R.W.1/The Special Sub-Inspector of Police is concerned, the Tribunal found that R.W.1 obtained signature of 3rd respondent in blank paper and the same was marked as Ex.P13. Considering the evidence of P.W.2 and R.W.1, the Tribunal accepted the evidence of P.W.2 who was an eyewitness and rejected the evidence of R.W.1 holding that the evidence of R.W.1 is not believable. It is well settled that the Tribunal is not bound by investigation by police or judgments in the criminal proceedings, but has to decide the negligence based on the evidence independently. The Tribunal has discharged its duty properly and by giving cogent and valid reason held that the accident occurred only due to rash and negligent driving by the driver of the lorry.

9. As far as quantum of compensation is concerned, the Tribunal considering the age and avocation of the deceased, awarded compensation under different heads which are just compensation in the circumstances of the case and are not excessive.

10. In the result, the Civil Miscellaneous Appeal is dismissed and award of the Tribunal is confirmed. The appellant-Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six



weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 4-claimants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gbi/krk

To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court,
Madras.

+1 cc to M/s.R.Sreevidhya, Advocate, S.R.No.7129

+1 cc to M/s.V.R.Anna Gandhi, Advocate, S.R.No.6073

C.M.A.No.1818 of 2017 and
C.M.P.Nos.11806 of 2018 & 9731 of 2017

RR(CO)
SSM(04/09/2019) .