IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1944 and 1945 of 2017
and C.M.P.Nos.10489 and 10490 of 2017

The Manager,
ICICI Lombard General Insurance Company Ltd.
First Floor, Arihant Plaza,
84/85, Walltax Road
Chennai-600 003. ... Appellant in both appeals

Vs

1.Ravikumar

2.Gangadharan

3.The Divisional Manager,
National Insurance Co.Ltd.
J.N.Street, Pondicherry.

4.Murugan ... Respondents in C.M.A.No. 1944 of 2017

1.Maina

2.Narayanan

3.Manivanna @ Madhubalan - Minor

4.Madhivani, Minor
(Minor respondents 3 and 4 are represented by their next friend / mother, the first respondent Maina).

5.Gangadharan

6.The Divisional Manager,
National Insurance Co.Ltd.
J.N.Street, Pondicherry. ... Respondents in C.M.A.No. 1945 of 2017

C.M.A.No.1944 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.03.2014 made in MCOP No.880 of 2011 on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge), Presiding Officer at Pondicherry.

C.M.A.No.1945 of 2017 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.03.2014 made in MCOP No.881 of 2011 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Presiding Officer at Pondicherry.

For Appellant in both appeals : Mrs.R.Sreevidhya

For Respondents in both appeals : Mr.J.Surendra Babu for R1 in C.M.A.No.1944 of 2017 and R1 to R4 in C.M.A.No.1945 of 2017

Mr.D.Baskaran for R3 in C.M.A.No.1944 of 2017 and R6 in C.M.A.No.1945 of 2017

COMMON JUDGMENT

The case in brief, is as follows:

On 05.09.2011, the first respondent in C.M.A.No.1944 of 2017 was returning to his home at Pannithittu from Kirumambakkam, Pondicherry in the Auto-rickshaw bearing Reg.No.PY-01-BA-7591 belonging to the second respondent and insured with the third respondent Insurance Company in CMA No.1944 of 2017. One Madhina was also travelling in the said auto-rickshaw along him. When the auto-rickshaw was proceeding near Suba Organics Private Limited Company in the Pannithittu Road at Pillayarkuppam, due to the rash and negligent driving of the driver of the auto-rickshaw, it dashed against the TATA ACE vehicle bearing Reg.No.PY-01-AC-4565 belonging to the fourth respondent and insured with the appellant Insurance Company in C.M.A.No.1944 of 2017. Due to the said impact, both of them sustained grievous injuries and they were taken to the Government General Hospital, Pondicherry. In spite of best treatment, Madhina succumbed to the injuries on 11.09.2011. The injured claimant filed a claim petition before the Tribunal in MCOP No.880 of 2011 (CMA No.1944 of 2017), claiming a sum of Rs.7,45,000/- as compensation. The legal heirs of the deceased Madhina filed a claim petition before the Tribunal in MCOP No.881 of 2011 (CMA No.1945 of 2017), claiming a sum of Rs.18,50,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,87,000/- with interest at the rate of 7.5% per annum from the date of petition, in respect of MCOP No.880 of 2011 (CMA No.1944 of 2017) and a total compensation of Rs.8,79,000/- with interest at the rate of 7.5% per annum from the date of petition, in respect of MCOP No.881 of 2011 (CMA No.1945 of 2017). Having given a finding that the accident had occurred due to the rash and negligent driving of the drivers of both the vehicles, the Tribunal directed both the Insurance Companies to pay compensation at 50% each and further ordered for pay and recovery, since there was violation of policy conditions by both the drivers.

2.Challenging the 50% liability fixed by the Tribunal, the appellant Insurance Company has come up with these appeals.

3.The learned counsel for the appellant Insurance Company has submitted that having come to the conclusion that the driver of the TATA ACE vehicle was not authorised to drive transport vehicles and that the said vehicle was not permitted to tow the trailer, the learned Tribunal has erred in still passing the judgment directing the appellant to pay the compensation and to recover the same from the owner of the vehicle. She submitted that the Tribunal ought to have directed only the owner of the TATA ACE vehicle to pay the entire compensation and exonerated the appellant completely. She also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the first respondent in C.M.A.No.1944 of 2017 and respondents 1 to 4 in C.M.A.No.1945 of 2017 / claimants has submitted that the Tribunal has correctly considered the materials and evidence on record and has awarded the just, fair and reasonable compensation and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials and evidence available on record carefully and meticulously.

6.As per the evidence of P.W.1-Ravikumar, the injured, both the vehicle drivers were rash and negligent and they are equally responsible for the accident. A perusal of Ex.R1-final report showed that charges were framed against the auto driver for non-possession of licence at the relevant point of time. R.W.2, the legal executive of the appellant Insurance Company has deposed before the Tribunal that there was breach of policy conditions by the driver of the TATA ACE vehicle, since TATA ACE vehicle is not permitted to tow the trailer. Considering the oral and documentary evidence, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the drivers of both the vehicles and that both of them have violated the policy conditions. Therefore, the Tribunal has ordered both the Insurance Companies to pay compensation to the claimants equally at 50% and thereafter recover the same from the respective owners of the vehicles. Having given a finding that the accident had occurred due to the rash and negligent driving of the drivers of both the auto-rickshaw and the TATA ACE vehicle, the Tribunal has directed both the appellant Insurance Company and the sixth respondent Insurance Company in CMA No.1944 of 2017, being the insured for the TATA ACE vehicle and the auto-rickshaw respectively, to pay the compensation equally at 50% and since there were violations of policy conditions on the part of both the drivers, the Tribunal permitted the Insurance Companies to recover the compensation from the respective owners. The Tribunal has correctly considered the materials and evidence adduced on record and fixed the contributory negligence on the part of the both the drivers equally and has correctly ordered for pay and recovery.

7.In respect of the quantum of compensation in MCOP No.880 of 2011 (CMA No.1944 of 2017), the Tribunal has awarded a sum of Rs.2,21,500/- towards medical expenses, relying upon Exs.P8 to P12 and P14-Medical Bills, Rs.4,500/- towards travelling expenses, Rs.80,000/- towards partial permanent disability of 40% at the rate of Rs.2,000/- per percentage of disability, Rs.20,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment, Rs.36,000/- towards loss of income during the treatment period considering that the injured would not have been in a position to do his work for a period of six months and Rs.20,000/- towards loss of amenities. The Tribunal has rightly considered the materials and evidence adduced on record and has awarded reasonable amounts under the above heads and hence the same does not require any interference.

8.In respect of MCOP No.881 of 2011 (CMA No.1945 of 2017), the Tribunal has awarded a sum of Rs.8,64,000/- towards pecuniary loss, fixing the monthly income of the deceased at Rs.9,000/- since she was a Lab Technician, adopting the multiplier of 16 and deducting 50% of the amount towards personal expenses of the deceased. The Tribunal has also awarded a sum of Rs.10,000/- towards funeral expenses and Rs.5,000/- towards loss of estate. The Tribunal has rightly considered the materials and evidence adduced on record, rightly fixed the monthly income of the deceased, adopted the correct multiplier, deducted 50% of the amount towards personal expenses of the deceased and arrived at Rs.8,64,000/- towards pecuniary loss. The amounts awarded under other heads are also very reasonable. Hence the compensation awarded by the Tribunal does not require any interference by this Court.

9.In the result, both the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

10.The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The minor respondents 3 and 4 in C.M.A.No.1945 of 2017 would have attained majority by now. Hence, on such deposit being made, all the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
(II Additional District Judge) (Presiding Officer),
at Pondicherry.

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

+1cc to Mr.D.Baskaran, Advocate SR.No.82244

+2cc to Mr.J.Surendra Babu, Advocate SR.No.82915

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.83144

C.M.A.Nos.1944 and 1945 of 2017
and C.M.P.Nos.10489 and 10490 of 2017

SSV(CO)
GMY(05/12/2019)