

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.10.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2415 of 2017
and C.M.P.No.13062 of 2017

The Branch Manager,
M/s.United India Insurance Co.Ltd.
No.50-A, Pallivasal Street
Perambalur.

... Appellant/2nd respondent

Vs

1.S.Selvi
2.S.Vinothkumar
3.Minor S.Divya

(R3 rep.by her natural guardian and
mother, Selvi, the first respondent herein).

... Respondent 1 to 4/ Petitioners

4.Angammal

5.R.Annamalai ...5th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act
against the judgment and decree dated 17.03.2017 made in MCOP
No.331 of 2015 on the file of the Motor Accidents Claims
Tribunal (Principal District Court), Perambalur.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.T.Gopinath for R1 to R4
No appearance for R5

JUDGMENT

The case in brief, is as follows:

On 17.03.2015 at about 09.55 a.m., the deceased Sekar was riding TVS-XL motorcycle bearing Reg.No.TN-45-BA-9985 in the Palaviduthi - Vaiyampatti Main Road from West to East direction on the extreme left side of the road. When he reached near Sengadu, the bus bearing Reg.No.TN-47-T-7479 belonging to the fifth respondent herein and insured with the appellant Insurance Company, which was proceeding ahead of the two-wheeler of the deceased, was stopped suddenly by its driver and dashed on the front side of the two-wheeler. Due to the said impact, the deceased was thrown away and sustained fatal injuries. The

deceased was admitted in the Government Hospital, Manapparai and thereafter in the A.J.Hospital, Manapparai and Government Headquarters Hospital, Trichy and he succumbed to the injuries on 21.03.2015 in the hospital. The legal heirs 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.11,31,950/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the same, the appellant Insurance Company has filed the present appeal.

3.The learned counsel for the appellant Insurance Company has submitted that the accident had occurred only due to the rash and negligent driving of the rider of the motorcycle. While not disputing with the quantum of compensation awarded by the Tribunal, the learned counsel submitted that at least the Tribunal ought to have fixed some contributory negligence on the part of the deceased, since the deceased failed to exercise a reasonable care while driving and failed to avail last opportunity to avoid the accident.

4.The learned counsel for the respondents 1 to 4 / claimants has submitted that the Tribunal has correctly considered the materials and evidence on record and has awarded the just, fair and reasonable compensation. It is also submitted that the Tribunal has correctly fixed the entire negligence on the appellant Insurance Company. Stating so, the learned counsel submitted that the judgment of the Tribunal 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 to 4 / claimants and perused the materials and evidence available on record carefully and meticulously.

6.The Tribunal has awarded a total compensation of Rs.11,31,950/- with interest at the rate of 7.5% per annum from the date of petition. As per the submission made on behalf of the Insurance Company before the Tribunal, the First Information Report has been filed against the deceased by his wife that the deceased drove the motorcycle in a rash and negligent manner and caused the accident. But, it is seen from the evidence of P.W.3-Santhi, official of Karur R.T.O. Office that even though there is no bus stop in the place of occurrence, each and every driver of the bus who passes through the said route used to stop the bus in the Sengadu Bus Stop. Since the driver of the bus stopped it suddenly in the place where there is no bus stop, taking note of the same, the Tribunal fixed the entire negligence on the

part of the driver of the bus and accordingly ordered the appellant Insurance Company to pay the entire compensation. This Court is of the considered view that had the deceased been careful in riding the motorcycle, the intensity of the accident would have been reduced and the deceased would not have suffered fatal injuries, although he might have suffered grievous injuries, since the fact remained that the bus was proceeding ahead of the two-wheeler of the deceased and the motorcycle of the deceased hit the back side of the bus. Therefore, had the deceased been slow and careful in riding the motorcycle, he would not have lost control of the two-wheeler. Thus, there is contributory negligence on the part of the deceased in driving the two-wheeler. In the circumstances, this Court deems it fit to reduce the compensation awarded by the Tribunal from Rs.11,31,950/- with interest at the rate of 7.5% per annum from the date of petition to Rs.10,00,000/- with interest at the rate of 7.5% per annum from the date of petition, due to the contributory negligence on the part of the deceased, as stated above. The shares of the claimants shall be in the same proportion, as apportioned by the Tribunal.

7.The Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

8.The appellant Insurance Company is directed to deposit the modified compensation of Rs.10,00,000/- with interest at the rate of 7.5% per annum from the date of petition, 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. The third respondent minor 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(CS II)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
Principal District Court, Perambalur.

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

+lcc to Mr.D.Bhaskaran , Advocate SR.No. 84881

+lcc to Mr.T.Gopinath , Advocate SR.No. 84375

C.M.A.No.2415 of 2017
and C.M.P.No.13062 of 2017

A.SK(10/03/2020)