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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1247 of 2013

and

M.P.No.1 of 2013

The Branch Manager,
The National Insurance Company Limited,
16, State Bank Road,
Coimbatore.

..Appellant/3rd Respondent

Vs.

1.M.Vasanthakumari
2.Minor. M.Nivedha
(Minor 2nd respondent represented
by her mother, 1st respondent herein)
3.D.Rajamanickam

..Respondents 1 to 3/Petitioner

4.M.Ganeshan

5.T.Bernit

..Respondents 4 & 5/Respondents 1 & 2

(R4 & R5 were set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 18.04.2006 made in M.C.O.P.No.211 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pollachi.

For Appellant : Mr.K.Padmanabhan

For RR 1 to 3 : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

RR4 & 5 : Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 18.04.2006 made in M.C.O.P.No.211 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pollachi.



3.The appellant is the 3rd respondent in M.C.O.P.No.211 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pollachi. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one R.Mohan, who died in the accident that took place on 09.12.2003.

4.According to respondents 1 to 3, on 09.12.2003 at about 13.30 P.M., while the deceased was riding his motorcycle bearing Registration No.TN 41 J 6058 from Injiparai to Valparai on Stanmore road, the driver of the auto bearing Registration No.TN 41 K 5895 belonging to the 5th respondent who was driving the auto in the opposite direction from Valparai to Stanmore drove the same in a rash and negligent manner and dashed against the motorcycle rode by the deceased and caused the accident. In the accident, the said R.Mohan was thrown away from his motorcycle and sustained grievous multiple injuries all over the body and immediately he was taken to Valparai Government Hospital for treatment. Thereafter, he was referred to Coimbatore Medical College Hospital for further treatment. But, he died on the way to Coimbatore Medical College Hospital. Therefore, the respondents 1 to 3 filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation against the respondents 4, 5 and appellant-Insurance Company, being the driver, owner and insurer of the auto respectively.

5.The respondents 4 and 5, being the driver and owner of the Auto respectively remained exparte before the Tribunal.

6.The appellant-Insurance Company, insurer of the auto belonging to 5th respondent filed counter statement and denied all the averments made by the respondents 1 to 3. According to the appellant, the accident has not occurred only due to negligence on the part of the 4th respondent-driver of the auto. The deceased also rode his motorcycle in a rash and negligent manner and contributed to the accident. The 4th respondent-driver of the auto was not having valid and effective driving license at the time of accident. For the said offence, the Motor Vehicle Inspector, Grade I, Pollachi has detained the 5th respondent's auto and issued a notice of seizure to the 5th respondent. The 5th respondent has not informed the appellant about the accident to the vehicle and its seizure, etc., and thereby violated the policy conditions. The 5th respondent knowing fully well that the 4th respondent was not having a valid and effective driving license, allowed the 4th respondent to drive the auto by violating policy and permit conditions. Hence, the appellant-Insurance Company is not liable to pay any compensation to the respondents 1 to 3. The motorcycle rode by the deceased was not insured with any Insurance Company and the deceased also rode the motorcycle without any valid and effective driving license.



The respondents have to prove that the deceased was having valid and effective driving license at the time of accident and has not contributed to the accident. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 to 3 are highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the 1st respondent examined herself as P.W.1, one Bennet, who was an eye-witness to the accident was examined as P.W.2 and Ganesh and Malliga were examined as P.W.3 and P.W.4 and 16 documents were marked as Exs.P1 to P16. On behalf of the appellant, one Udhayakumar, an Executive Officer of the appellant and one Ravikumar, Motor Vehicle Inspector were examined as R.W.1 and R.W.2 and two documents were marked as Exs.R1 and R2.

8. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 5th respondent and directed the respondents 4, 5 and appellant, being the driver, owner and insurer of the auto to jointly and severally pay a sum of Rs.5,20,000/- as compensation to the respondents 1 to 3.

9. Against the said award dated 18.04.2006 made in M.C.O.P.No.211 of 2003, the appellant-Insurance Company has come out with the present appeal.

10. The learned counsel appearing for the appellant-Insurance Company contended that the accident has occurred only due to rash and negligence riding by the deceased. The Tribunal erred in fixing negligence on the part of the 4th respondent-driver of the auto solely relying on the evidence of P.W.1 and P.W.2 and documents filed by the respondents 1 to 3. The Tribunal failed to see that two vehicles coming in the opposite direction were involved in the accident. The Tribunal ought to have fixed negligence equally on the part of the deceased and 4th respondent. The respondents 1 to 3 did not produce the driving license of the deceased. The Tribunal ought to have drawn adverse inference against the deceased. The finding of the Tribunal with regard to driving license of the 4th respondent is erroneous. The Tribunal failed to consider the evidence of R.W.1 and R.W.2 and Exs.R1 & R2. The Tribunal failed to consider that respondents 4 and 5 did not appear before the Tribunal and did not give any contra evidence to the evidence of R.W.1 and R.W.2. In the absence of any evidence, the Tribunal ought to have ordered pay and recovery. The monthly income of the deceased fixed by the Tribunal is excessive and is without any basis. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.



11.Mr.M.Lokesh, learned counsel appearing for the respondents 1 to 3 made submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeal.

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12.From the materials available on record it is seen that it is the contention of the respondents 1 to 3 that 4th respondent-driver of the auto drove the auto in a rash and negligent manner and dashed against the motorcycle rode by the deceased and caused accident. In the accident, the deceased sustained injuries and subsequently died. To substantiate their contention, the 1st respondent examined herself as P.W.1 and an eye-witness who lodged the complaint based on which Ex.P1/F.I.R. was registered was examined as P.W.2. F.I.R. was registered against the 4th respondent-driver of the auto. The appellant did not examine the driver of the auto or any eyewitness to disprove the evidence of P.W.2 and Ex.P1/F.I.R. The Tribunal considering the evidence of P.W.2, Ex.P1/F.I.R. and in the absence of any contra evidence by the appellant, held that accident has occurred only due to rash and negligent driving by the 4th respondent-driver of the auto. The contention of the learned counsel appearing for the appellant that accident has occurred due to negligence on the part of the deceased and he also contributed to the accident is without any evidence. The award of the Tribunal fixing negligence on the part of the 4th respondent-driver of the auto is valid.

13.As far as the contention of the learned counsel appearing for the appellant with regard to non-possessioning of driving license by the 4th respondent is concerned, it is seen from the award of the Tribunal that the 4th respondent was not prosecuted for non-possessioning of driving license. Further R.W.2-Motor Vehicle Inspector, who spoke about Ex.P3 is not the Motor Vehicle Inspector who inspected the auto and gave the report of the auto which was marked as Ex.P3. The appellant has not called upon the respondents 4 and 5 to produce the driving license of the 4th respondent. No official from R.T.O. was examined to prove that 4th respondent did not possess driving license at the time of accident. The Tribunal considering the above materials has held that appellant failed to prove that 4th respondent did not possess driving license at the time of accident. The said finding is valid.

14.As far as the contention of the learned counsel appearing for the appellant that respondents 1 to 3 failed to produce the driving license of the deceased and Tribunal ought to have drawn adverse inference is concerned, the Tribunal considering the evidence of P.W.2, Ex.P1/F.I.R., absence of contra evidence, held that accident has occurred only due to rash and negligent driving by the driver of the auto/4th respondent herein. In such



case, question of production of the driving license of the deceased does not arise.

15. As far as the quantum of compensation is concerned, it is the contention of the respondents 1 to 3 that deceased was aged 32 years, working as Labour in Hindustan Lever Limited, Tea Estate, Injiparai estate and taking Tuition in his residence and running a dairy farm and was earning a sum of Rs.6,750/- per month. They failed to prove the said contention. The Tribunal considering the materials on record, date of accident, age and nature of work done by the deceased, fixed monthly income of the deceased at Rs.2,500/- and awarded a sum of Rs.5,10,000/- towards loss of dependency. The deceased was aged 32 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal instead of deducting 1/3rd towards personal expenses of the deceased, deducted a sum of Rs.2,000/- towards personal expenses from Rs.4,500/-. In view of the above, the total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

16. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.5,20,000/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs is confirmed. The respondents 4, 5 and appellant-Insurance Company are jointly and severally directed to deposit the 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 to the credit of M.C.O.P.No.211 of 2003 on the file of the Motor Accidents Claims Tribunal, Sub Court, Pollachi. On such deposit, the respondents 1 and 3 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Banks, till the minor 2nd respondent attains majority. On such deposit, the 1st respondent, being the mother of the minor 2nd respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd respondent. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar(CCC)

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Sub-Assistant Registrar



To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Pollachi.

Copy to
The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.Ma.P.Thangavel, Advocate sr 36994.

C.M.A.No.1247 of 2013

RSI (CO)
SP(24/08/2021)