

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1261 of 2011

The United India Insurance Co. Ltd.
Motor Third Party Cell Claims Office,
Chennai - 600 002. ..Appellant/2nd Respondent

Versus

- 1.Lakshmi @ Muthulakshmi
- 2.Minor. Aswinisree D/o. C. Karthhickeyan
3. Minor. Rajinisree D/o. C. Karthickeyan
4. Parvathy W/o. Chakrapanni
5. Chakrapani, ...1 to 5 Respondents/claimants
6. Jayaprakash, S/o.Viswanathan ..6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 19.06.2009 made in M.C.O.P.No.519 of 2006 on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Court, (FTC-1)) Poonamallee.

For Appellant : Mr.S. Arun Kumar

For Respondents-1-4 : Mr. Manoj Sreevalsan

For Respondents 5 & 6: No Appearance

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J U D G M E N T

The Insurance company has preferred this appeal against the Award and Decree dated 19.06.2009 made in M.C.O.P.No.519 of 2006 on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Court, (FTC-1)) Poonamallee, questioning the liability on their side and quantum of compensation awarded in favour of the legal heirs of the deceased.

2. The Insurance company/appellant herein who is insurer

of the offending vehicle, was the 2nd respondent and the respondents 1 to 5 herein who are legal heirs of the deceased were the claimants and 6th respondent herein who is driver of the offending vehicle was the 1st respondent before the Tribunal. For the sake of convenience, the parties are referred to in the same ranking as before the Tribunal.

3. The facts of case briefly are as under:

That on 09.05.2006 at about 11.00am while the deceased Karthikeyan was riding his motor cycle in bearing registration No. TN 22 AC 6139 on the Ambatur to Puzhal Road, 1st respondent driving his motor cycle in bearing registration No. TN 20 AW 5733 in a rash and negligent manner from the opposite direction, hit the motor cycle of the deceased Karthikeyan. Due to impact of the accident, the deceased Karthikeyan sustained head injury and was admitted in the hospital wherein he died after three days during the treatment. In view of the fatal accident, the legal heirs of the deceased had jointly filed a claim petition in M.C.O.P. No.519 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, (FTC-1) Poonamallee for compensation of Rs.20,00,000/- (Rupees Twenty Lacs Only). After considering the oral and documentary evidence of both parties, the Claims Tribunal has awarded a sum of Rs.8,46,000/- to the petitioners as compensation for the death of their only breadwinner in the accident. Being aggrieved by the award passed by the Tribunal, the Insurance company has filed the present appeal questioning their liability and quantum of the compensation awarded in favour of the petitioners.

4. The learned counsel for the appellant/Insurance company would submit that the Tribunal erred in holding that the 1st respondent has driven his motor cycle in a rash and negligent manner and dashed against the vehicle of the deceased without considering the rash negligent driving on the part of the deceased. Further, the quantum of the compensation is awarded to the claimants on higher side in the event of own negligence driving of the deceased. Hence, the award passed by the Tribunal is contrary to law and liable to be set aside.

5. The learned counsel for the respondents 1 to 4 would submit that the Tribunal has awarded the compensation after considering the oral and documentary evidence let in by both parties and as the deceased was only the breadwinner of the family, who died in the road accident due to the rash and negligent driving of the 1st respondent, leaving behind his wife and two minor girl children as well as parent. There will be basic requirement and commitment to be envisaged by the legal heirs of the deceased as they were depending on the income of the deceased only. After having compared the Ex.P1-F.I.R., Ex.P4, Brake Inspector Report on the offending

vehicle, Ex.P8, Brake Inspector Report on the vehicle of the deceased, and Ex.P5, Charge sheet along with oral evidences of P.W.1 and P.W.2 made in the Tribunal, the Tribunal has confirmed that the aforesaid accident has taken place in view of the rash and negligent driving of the 1st respondent. As there was no policy violation and the policy of the offending vehicle was also in existence at the time of the accident, the appellant is liable to pay the compensation to the legal heirs of the deceased. Further, even if the petitioners have sought compensation of Rs. 20,00,000/- for the death of their sole breadwinner in the accident, the Tribunal has awarded only a sum of Rs.8,46,000/- after analysing entire oral and documentary evidence placed before the Tribunal. Hence, the Hon'ble High Court may be pleased to confirm the award passed by the learned Tribunal Judge enabling them to get compensation for the death of their sole breadwinner.

6. Heard, the learned counsel appearing for both sides and perused the material available on record. On the side of the petitioners, oral evidence of P.W.1 to P.W.3 were examined and documentary evidence of Ex.P1 to Ex.P11 were marked. On the side of the respondents, oral evidence of R.W1 & R.W.2 were examined and no exhibits were marked as documentary evidence.

7. On perusal of the award, the Tribunal has corroborated the factum and manner of the accident after having carefully considered Ex.P5, Charge sheet filed against the driver of the vehicle and Ex.P8 brake inspector report on the offending vehicle comparing with oral evidence of P.W.1 and P.W.2. It shows clearly that the 1st respondent has driven his vehicle in rash and negligent manner whereby causing fatal accident and head injuries to the deceased and resorting to death of sole breadwinner of the family. Further, the rider of offending vehicle was not examined to prove the rash and negligence driving of the deceased and there is no evidence to prove the fault of the deceased on his negligence driving during the trial. Hence, there is no

dispute on the factum and manner of the accident under Section 163A of the Motor vehicles Act. As regards quantum of compensation, P.W.3, the Manager of the Texcel Tools services, Padi has deposed that the deceased was working as OPG operator in their company and drawing a salary of Rs.12,000/- per month and submitted Ex.P11, salary certificate of the deceased before the Tribunal. However, the Tribunal has fixed the income of the deceased as Rs.6,000/-per month, as no documents produced as proof, as records of salary pertaining to the deceased and as the deceased was the sole breadwinner of the family leaving his wife and two minor girl children and aged parents, the quantum of the compensation fixed by the Tribunal cannot be said as on higher side and erroneous as

assailed by the Insurance company/appellant herein. Hence, this Court is not inclined to interfere with the same.

8. In the result, the Civil Miscellaneous appeal is dismissed. The appellant-Insurance company is directed to deposit the award amount with interest @7.5% p.a. from the date of petition till the date of deposit in M.C.O.P. No.519 of 2006, on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Court, (FTC-1)) Poonamallee, less already deposited if any, within a period of three weeks from the date of receipt of copy of this Judgment. On such deposit being made, the respondents 1 to 5 are permitted to withdraw the same as proportioned and directed in the award by making necessary application before the Tribunal. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed if any.

Sd/-

Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

lbm

To

1.Motor Accident Claims Tribunal
(Additional District and Sessions Court,
(FTC-1)) Poonamallee.

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

+1cc to Mr.Manoj Sreevalsan, Advocate SR.No.10567

+1cc to Mr.S.Arunkumar, Advocate SR.No.10364

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CP(CO)

GMV(16/04/2021)