IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1390 of 2013
and M.P.No.1 of 2013

The Oriental Insurance Co. Ltd.,
Tiruvannamalai. ... Appellant/4th Respondent

Vs.

1.Muniyammal ...1st Respondent/Petitioner

2.Nagarjuna Reddy

3.The United India Insurance Co. Ltd.,
Nellore, Andhra Pradesh.

4.Govindaraj ...2 to 4 Respondents / 1 to 3 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree made in M A C T O.P.No.8 of 2005 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Arni dated 10.7.2012.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.J.Ashok for R1
Mr.Srinivasaramalingam for R3
R2 & R4 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 10.7.2012 made in MACT.O.P.No.8 of 2005 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Arni.

2. The case of the Appellant is that on 13.10.03 at about 5.00 a.m, the son of the first respondent, namely, Settu was coming from Kedada (Andra Pradesh), Prakasam District Near Athangi to Sarkat Palli Road by Lorry bearing Registration No.TCF 5355 to Chennai. The said lorry was driven by the deceased Settu. While he was coming on the left side of the road, the driver of the opposite lorry bearing Registration

No.AP 26 W 130 drove the same in a rash and negligent manner and dashed on the front of the said lorry Registration No.TCF 5355. As a result, the Settu had sustained grievous injuries and immediately he was taken to the District Hospital, Ongode at Prakasam District in Andra Pradesh and he was admitted there for expert treatment. Thereafter, he died in the hospital and the driver of the opposite lorry bearing Registration No.AP 26 W 130 also died in the said accident. On account of the death of Settu, the first respondent who is the mother of the deceased filed a petition before the Motor Accidents Claims Tribunal (Subordinate Judge), Arni, claiming Rs.10,00,000/- as compensation under various heads.

3. Denying the allegations, the appellant insurance company filed a counter affidavit before the Tribunal stating that the claim for compensation of Rs.10,00,000/- as against the appellant was not maintainable in law or on facts. Further, it was stated that the accident was solely due to the rash and negligent driving of the opposite lorry bearing Registration No.AP 26 W 130 which was insured with the third respondent insurance company. Hence the appellant was not liable to pay compensation to the first respondent/claimant. Moreover, it was stated that the rate of interest claimed was excessive and claiming interest from the date of accident was also not sustainable under Section 171 of the Motor Vehicles Act.

4. During the trial, on the side of the first respondent/claimant, two witnesses were examined as PW1 and PW2 and four documents were marked as Exs.P1 to P4. On the side of respondents, two witnesses were examined as RW1 and RW2 and no documents were marked.

5. The Tribunal, after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the claimant and awarded Rs.3,24,000/- for all the losses made to the claimant. Aggrieved by the same, the appellant insurance company has filed this appeal before this Court.

6. The learned counsel for the appellant submitted that the deceased Settu was aged 30 years and he was hale and healthy at the time of accident. He was an unmarried person and he was the only earning member of the family. He was a driver and was earning Rs.6,000/- per month. The mother of the deceased was depending upon the sole income of the deceased Settu.

7. The learned counsel for the appellant further submitted that the Tribunal erred in holding that the deceased, the driver of the lorry TCF 5355 owned by the fourth respondent and duly insured with the appellant was equally responsible for the accident along with the driver of the

oncoming lorry AP-26-W-5355 owned by the second respondent and duly insured with the third respondent and the entire negligence ought to have been fixed only on the driver of the lorry AP-26-W-5355 as the only available eyewitness had blamed only the driver of the above lorry AP-26-W-5355. The Tribunal after having held that the deceased was equally responsible for the accident erred in fastening joint and several liability on all the respondents before the Tribunal, namely the owners and insures of both lorries treating the case as though it was a case of composite negligence whereas it was a case of contributory negligence in which the deceased had contributed equally and courted the accident for which no compensation can be paid.

8. The learned counsel for the appellant also submitted that the Tribunal after having held that the drivers of both the lorries were responsible for the accident, ought to have fixed 50% liability on the owner and insurer of the lorry AP-26-W-5355, namely the second and third respondents and rejected 50% of the compensation being the contributory negligence of the deceased. The Tribunal erred in fastening the liability also on the owner and insurer of the lorry driven by him overlooking the legal position that the tort feasor is not entitled to compensation. The Tribunal ought to have dismissed the claim as against the fourth respondent, the owner of the vehicle driven by the deceased and the appellant, the insurer of the said vehicle, since a tortfeasor is not entitled to maintain a claim under the Motor Vehicle Act. The Tribunal erred in ordering joint and several liability without apportioning when all the parties are available.

9. Heard the learned counsel for the appellant and the learned counsel for the first and third respondents and perused the materials available on record.

10. On perusal of the records, it is observed that even though it was found that the drivers of both the lorries were responsible for the alleged accident, the Tribunal wrongly fastened the liability on all the respondents. The Tribunal ought to have fixed 50% liability on the owner and insurer of the lorry AP-26-W-5355, namely the second and third respondents and rejected 50% of the compensation being the contributory negligence of the deceased. Hence, this Court is of the view that the appellant is to be exonerated from liability and only the third respondent is liable to pay 50% of the compensation to the claimant. The deceased was aged only 30 at the time of accident, but the Tribunal fixed his income meagerly at Rs.3,000/- per month, and this Court is inclined to enhance the same. Accordingly, the income of the deceased is fixed as Rs.4,500/- per month and the sum of Rs.3,06,000/- awarded towards Loss of Income is hereby modified as Rs.4,59,000/- (4500x12x17x50%). The sum of

Rs.18,000/- awarded towards other expenses and losses is found to be meager, hence the same is enhanced at Rs.41,000/-.

11. In view of the above observations made by this Court, the compensation awarded by the Tribunal is modified as Rs.5,00,000/-.

12. In the result, this Civil Miscellaneous Appeal is disposed of and the third respondent insurance company is directed to deposit 50% of the compensation amount i.e. Rs.2,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the same by filing a formal petition before the concerned Court. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//
Sub Assistant Registrar

pam

To

1.The Motor Accidents Claims Tribunal
(Subordinate Judge), Arni.

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

+1cc to Mr.M.Krishnamoorthy, Advocate SR.16375
+1cc to Mr.J.Ashok, Advocate SR.17266

C.M.A.No.1390 of 2013

RLD(CO)
CB(22/01/2021)