IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1584 of 2011
and
M.P.No.1 of 2011

(Through Video Conferencing)

The United India Insurance Company Limited,
No.2, Dr.Shankaran Street,
Namakkal - 637 001. ... Appellant/2nd Respondent

Vs.

1.Rangarajan
2.Vijayalakshmi
3.Elamathi
4.K.Periyannan ..Respondents 1 to 4/1st Respondent
(R4 set exparte in the lower Court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 30.12.2005 made in M.A.C.T.O.P.No.112 of 2005 on the file of the Motor Accident Claims Tribunal Officer (District Judge) at Perambalur.

For Appellant : Mr.D.Bhaskaran
R1 to R3 : Dismissed vide order dated 30.10.2005.

J U D G M E N T

The insurance company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 30.12.2005 passed by the Motor Vehicles Accident Claims Tribunal (District Judge), Perambalur in M.C.O.P.No.112 of 2005.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,32,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit, to the 1st to 3rd respondents/claimants. The deceased Prabhakaran is the son of 1st and 2nd respondents and the brother of the 3rd respondent.

3. On the date of the accident, the deceased was aged about 27 years and is said to have died in an accident while riding a motorcycle when he was hit by a lorry bearing registration

number T.N-28-L-4417, belonging to the 4th respondent insured by the appellant herein, coming from the opposite direction.

4. The impugned Judgment and Decree passed by the Tribunal is sought to be assailed by the appellant insurance company on the ground that the Tribunal erred in concluding that the accident was due to rash and negligent driving of the lorry by the driver without appreciating the evidence. It is further submitted that the deceased rode the motorcycle in a rash and negligent manner and without noticing the lorry coming from the opposite direction and tried overtaking a bus in front of him and in the process came under the wheels of the lorry.

5. It is further submitted that the Tribunal failed to note that FIR was not given by any of the occupants and hence it cannot be inferred that there was negligence on the part of the lorry driver. It is further submitted that there was also pillion rider with the deceased whose evidence was not produced by the claimants. It is further submitted that the Tribunal erred in fixing multiplier for 18 years contrary to the decisions of the Hon'ble Supreme Court.

6. I have considered the arguments advanced on behalf of the appellant.

7. It is noticed that by an order dated 30.10.2015 the appeal was directed to be dismissed for non-compliance of service of notice on the respondents. Office note also indicates that the appellant had failed to take steps and therefore this Civil Miscellaneous Appeal is liable to be dismissed.

8. It is however noticed that on an earlier occasion paper publication was also ordered and a paper publication was effected on 08.04.2010 by the appellant Insurance Company in the Trichy edition of Malai Murusu newspaper. Thus, there was sufficient service of notice on the contesting respondents. However, the respondents have not entered appearance presumably because they may have not seen the paper publication.

9. Though none of the respondents are present today, I am inclined to take of this Civil Miscellaneous Appeal and dispose the same on merits as no adverse orders are proposed being passed against the 1st to 3rd respondents/claimants. Further, this appeal is of the year 2011. The deceased was aged 27 years. The Tribunal ought to have applied 17 multiplier as per the decision of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12. However, the impugned Judgment and Decree was passed on 30.12.2005 when the said decision of the Hon'ble Supreme Court was not available. There were conflicting decisions at that point of time.

10. Since the appeal is taken up for hearing today, the compensation awarded may be required re-quantified. However, on the re-quantified compensation towards loss of income, the claimants would have been entitled to a further addition towards future prospects. Similarly, the claimants would have been entitled to higher amount of compensation towards conventional heads as per the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

11. That being the case, I am not inclined to disturb the compensation awarded in the impugned Judgment and Decree in absence of an appeal. Under these circumstances, I confirm the Judgment and Decree. This Civil Miscellaneous Appeal is therefore liable to be dismissed.

12. The appellant Insurance Company is therefore directed to deposit the compensation awarded together with interest at 7.5% per annum from the date of filing of the claim petition as was awarded by the Tribunal, if it has not already been deposited, within a period of six weeks from the date of receipt of a copy of this Judgment. Claimants are entitled to withdraw the same by filing suitable application before the Tribunal, if the award amount has not been already withdrawn by them as per the impugned Judgment and Decree.

13. This Civil Miscellaneous Appeal is dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

The Motor Vehicles Accident Claims Tribunal
(District Judge), Perambalur.

AKM/17.04.21/3P-2C/

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