

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2239 of 2013

and

M.P.No.1 of 2013

United India Insurance Co. Ltd.
No.70, NSC Bose Road
3rd floor, Sowcarpet
Chennai-79.

.. Appellant/2nd Respondent

Vs.

1.M.Sasikala

2.Minor.M.Padmasri

3.Minor.M.Rajendra Prasad
(Minors represented by their
mother and next friend 1st respondent)..1 to 3 Respondents /
Claimants

4.M/s.Ammayappar Roadways
No.230, Linghi Chetty street
Chennai-600 001.

..4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.08.2012 made in M.C.O.P.No.4834 of 2008 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

For Appellant : Mr.S.Arunkumar

For R1 to R3 : Mr.U.Chithambaram
for Mr.K.Varadhakamaraj

For R4 : No appearance

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 27.08.2012

made in M.C.O.P.No.4834 of 2008 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellant is 2nd respondent/Insurance Company in M.C.O.P.No.4834 of 2008 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the death of one Munusamy, who died in the accident that took place on 16.07.2008.

3.According to the respondents 1 to 3, on the date of accident i.e., on 16.07.2008 at about 20.45 hours, while the deceased Munusamy was riding in his motorcycle at Poonamallee High Road near Chinnamman koil junction, Avadi, the driver of the container lorry belonging to the 4th respondent drove the same in a rash and negligent manner from opposite direction, hit the motorcycle and caused the accident. In the accident, the deceased sustained grievous injuries and died on 08.10.2008. Therefore, the respondents 1 to 3 filed the above claim petition claiming compensation against the 4th respondent and the appellant/Insurance Company.

4.The 4th respondent, owner of the container lorry, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident has occurred only due to rash and negligent riding by the deceased Munusamy. The respondents 1 to 3 have to prove that the driver of the lorry and the deceased possessed valid driving license to drive the vehicles at the time of accident. In the alleged accident, two vehicles are involved. The owner and insurer of the motorcycle were not made as parties to the claim petition. Hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 3. In any event, the compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent, wife of the deceased, examined herself as P.W.1 and one Ilango, eye-witness to the accident, was examined as P.W.2 and marked five documents as Exs.P1 to P5. On the side of the appellant/Insurance Company, one Mr.R.P.Sukumar, the Administrative Officer of the Insurance Company, was examined as R.W.1 and four documents were marked as Exs.R1 to R4.

7.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 lorry belonging

to the 4th respondent and directed the appellant/Insurance Company being insurer of the said lorry, to pay a sum of Rs.8,45,600/- as compensation to the respondents 1 to 3.

8. Against the said award dated 27.08.2012 made in M.C.O.P.No.4834 of 2008, granting compensation to the respondents 1 to 3, the appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fixing liability on the appellant, when the respondents 1 to 3 have failed to prove the involvement of the insured vehicle and failed to note the discrepancies in mentioning the time of the accident in the records. The Tribunal erred in holding that the death occurred due to the injuries sustained in the accident, when the respondents 1 to 3 have failed to examine the treated Doctor and marked the Post-mortem certificate. The appellant examined R.W.1 and marked Exs.R1 to R4 and proved that the 4th respondent has violated the policy conditions. The Tribunal ought to have dismissed the claim petition. The total compensation awarded by the Tribunal is excessive, when the respondents 1 to 3 have not proved the avocation and income of the deceased and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the respondents 1 to 3 made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11. Though notice has been served on the 4th respondent and its name is printed in the cause list, there is no representation for the 4th respondent either in person or through counsel.

12. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials available on record.

13. It is the contention of the respondents 1 to 3 that while the deceased was riding his motorcycle on 16.07.2008 at Poonamallee High Road near Chinnamman koil junction, Avadi, the driver of the container lorry belonging to the 4th respondent drove the same in a rash and negligent manner, dashed against the motorcycle and caused the accident. The deceased was admitted on the same day in Government Stanley Hospital, took treatment for 63 days and was discharged on 18.09.2008. Again the deceased was admitted in the same hospital on 06.10.2008 and discharged on 07.10.2008 on the information given by the Doctors that he will not survive. The deceased died on 08.10.2008. The

respondents 1 to 3 examined P.W.2, eye-witness to the accident, who deposed that the accident has occurred only due to rash and negligent driving by the driver of the container lorry belonging to the 4th respondent. The appellant has not let in any contra evidence to the evidence of respondents 1 to 3. The Tribunal considering the evidence of P.W.2 and Ex.P1/F.I.R., held that the accident occurred only due to rash and negligent driving by the driver of the container lorry belonging to the 4th respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.From the award of the Tribunal, it is seen that the deceased was admitted in Government Stanley Hospital, Chennai, immediately after the accident. The deceased has taken treatment till 18.09.2008, again admitted in the same hospital on 06.10.2008, discharged on 07.10.2008 and died on 08.10.2008. The respondents 1 to 3 filed two discharge summaries marked as Exs.P2 and P3. P.W.1 deposed that the Doctors informed her that the health condition of her husband is critical and he will not survive. The deceased died on the very next day of discharge on 07.10.2008. Considering the entire materials, it is seen that there is nexus between the injuries and death of the deceased. It is the contention of the appellant that the deceased did not die due to the injuries, but died due to some other reason. The appellant has not specified any other reason for the death of the deceased and has not let in any evidence to show that the deceased did not die due to the injuries sustained in the accident. The Tribunal elaborately considered the contention of the appellant, the respondents 1 to 3 and the documents filed held that the appellant has not proved that the death is due to some other reason. In view of above materials, there is no error in the finding of the Tribunal warranting interference by this Court.

15.As far as quantum of compensation is concerned, the Tribunal considering the age, avocation and nature of work done by the deceased, fixed monthly income and awarded compensation. The total compensation awarded by the Tribunal under different heads are not excessive warranting interference by this Court.

16.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.8,45,600/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire 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. On such deposit, the 1st respondent is permitted to withdraw the respective share of the award amount as per the apportionment fixed by the Tribunal, along with

proportionate interest and costs, less the amount if any, already withdrawn. The share amounts of the minors/respondents 2 & 3 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st respondent being mother of the minors/respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kj
To

1.The Chief Judge
Motor Accidents Claims Tribunal
Small Causes Court, Chennai.

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

+1 cc to M/s.S.Arun kumar, Advocate Sr.No. 39128
+1 cc to M/s.K.Varadha Kamaraj, Advocate Sr.No. 38931

C.M.A.No.2239 of 2013
and
M.P.No.1 of 2013

CP(CO)
RMP(13/05/2021)