

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.03.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2482 of 2013

The Branch Manager,
M/s Shriram General Insurance
Company Limited,
2nd Floor, Rear Portion
Nagdappa Complex,
1076, Mettupalayam Road,
Coimbatore.

...Appellant/3rd Respondent

Vs

1.Shanthi
2.Mariadoss
3.Alphonsa
4.John Paul
5.Selvagani
6.Vijay
7.Minor - Sathiya Pandian
(Minor 7th respondent represented by
his mother & Guardian, Shanthi, 1st respondent herein)
8.Ranganathan
9.Rajeswari
(R8 and R9 set exparte in Lower Court)

...Respondents 1 to 7/Petitioner /

Respondents 8 & 9/Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the Judgement and decree dated 25.06.2012 made in M.C.O.P.No.1026 of 2009 on the file of VII Additional District Judge, Coimbatore Camp at Tirupur.

For Appellant : Mr.J. Michael Visuvasam

For R1 to R7 : Mr.S. S. Swaminathan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award dated 25.06.2012 made in M.C.O.P.No.1026 of 2009 on the file of VII Additional District Judge, Coimbatore Camp at Tirupur

2.The appellant is the 3rd respondent in M.C.O.P.No.1026 of 2009 on the file of the Motor Accident Claims Tribunal, VII

Additional District Judge, Coimbatore at Tirupur. Respondents 1 to 7 herein/legal heirs of the deceased, have filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of one M.Yesudas who died in the accident that took place on 13.05.2009.

3.According to the respondents 1 to 7 on 13.05.2009 at about 7.50 p.m, when the deceased M.Yesudas was standing in front of G.K. Bakery near Mahindra Industries, North side, Kalapatti Road, a car bearing Registration No.TN-34-B-3516, belonging to the 9th respondent, which was driven by its driver in a rash and negligent manner in the opposite direction, dashed against the deceased. In the impact the deceased sustained injuries and admitted in K.M.C.H.Hospital. Inspite of treatment, he died in the hospital. Hence, the legal heirs of the deceased filed a claim petition before the Tribunal seeking Rs.10,00,000/- as compensation against the respondents 7 and 8.

4. The respondents 8 and 9, driver and owner of the car remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the deceased without observing traffic rules, suddenly crossed the road and invited the accident. The driver of the offending vehicle did not possess valid driving licence at the time of accident. The Respondents 1 to 7 who are the claimants failed to prove that they are the legal heirs of the deceased M.Yesudas. The respondents 1 to 7 have to prove the age, avocation and income of the deceased by producing valid documents. In any event, the compensation claimed by the respondents 1 to 7 are excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, wife of the deceased, the 1st respondent examined herself as P.W.1 and one Kasi, eye-witness, was examined as P.W.2 and one Sonakaruppan was examined as P.W.3 and marked six documents as Exs.P1 to P6. On the side of the appellant/Insurance Company, one Sivasubramaniam, Junior Assistant in Regional Transport Office(Ooty) was examined was examined as R.W.1, one Sivakumar, Junior Assistant in Regional Transport Office, (Coimbatore) was examined as R.W.2. and one Saravanan, Executive officer of appellant - Insurance Company was examined as R.W.3 and marked four documents 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 car and directed the Appellant/Insurance Company to pay a sum of Rs.5,41,000/- as compensation to the respondents 1 to 7/ legal heirs of the

deceased.

8. Against the award passed by the Tribunal, the Appellant/Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the Insurance Company contended that at the time of Registering the car it was registered as a private car and later it was converted as taxi and the same was not informed to the Insurance Company. The owner of the vehicle/9th respondent herein suppressed the material fact. Hence, this respondent is not liable to pay compensation for the claimants and prayed for exonerating the appellant.

10. The learned counsel appearing for the respondents 1 to 7 submitted that the deceased was earning a sum of Rs.8,000/- per month by working as a security guard. The Tribunal without considering the same, fixed only a meagre sum of Rs.4,500/- per month as notional income of the deceased. The amounts awarded by the Tribunal under different heads are meagre and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 to 7 and perused the materials available on record.

12. It is the contention of the appellant/Insurance Company that at the time of Registering the car bearing Registration No.TN-34-B-3516 belonging to 9th respondent, it was registered as a private car and later it was converted as taxi and the same was not informed to the appellant/Insurance Company. Therefore, the owner of the vehicle/9th respondent herein suppressed the material fact. As there were different procedures to be followed for the private car and taxi by the Insurance Company which was not effected in the policy, they are not liable to pay any compensation. The Tribunal held that, with respect to the present case on hand, the deceased was third party and the Motor vehicles Act is to provide relief to the persons, who are affected due to the accident and the policy was in existence at the time of accident. Hence, the Insurance company as a insurer of the car is liable to pay compensation. In such circumstances, the compensation awarded by the Tribunal is not interfered with and the same is hereby confirmed.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal in M.A.C.T.O.P.No.1026 of 2009 on the file of the VII Additional District Judge at Coimbatore, Tirupur is confirmed. The appellant/Insurance Company is directed to deposit the award

amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the respondents 1 to 7 are permitted to withdraw the award amount as per the ratio of the apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

smn

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
VII Additional District Judge, Coimbatore.

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

+lcc to Mr.S.S.Swaminathan, Advocate, S.R.No. 22360

C.M.A.No.2482 of 2013

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