

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2692 of 2013
and M.P.No.1 of 2013

M/s.United India Insurance Co. Ltd.
No.448, Dr.Nanjappa Road
Coimbatore.

... Appellant /3rd Respondent

Vs.

1.Vennila (minor)
(Minor 1st respondent represented
by mother and next friend Thulasi)

2.M.Suresh Kumar

3.M.Kathiravan

4.R.Chinnarasu
(Respondents 2 to 4 remained exparte
before the Tribunal)

... Respondents/Petitioners and RR1,2,4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.06.2010 made in M.C.O.P.No.1363 of 2005 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Coimbatore.

For Appellant : Mrs.C.Harini
for Mr.M.B.Gopalan

For R1 : No appearance

For R3 and 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 challenging the award dated

16.06.2010 made in M.C.O.P.No.1363 of 2005 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Coimbatore.

2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.1363 of 2005 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Coimbatore. The 1st respondent represented by his mother filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by her in the accident that took place on 22.12.2004.

3.According to the 1st respondent, on the date of accident i.e., on 22.12.2004 at 8.45 a.m., while she along with her sister Saranya were walking along the Thudiayalur to Masuvai Main Road on the extreme left side of the road from West to East direction to go to school, near the scan workshop Appanaickenpalayam, a bricks laden lorry belonging to the 3rd respondent, which was coming behind, driven by the 2nd respondent in a rash and negligent manner at high speed, turned to its right side, got capsized and thus, the accident has occurred. In the said accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the respondents 2 to 4 and the appellant/Insurance Company.

4.The respondents 2 and 3, the driver and owner of the lorry respectively and the 4th respondent, in whose name the insurance policy stood, remained exparte before the Tribunal.

5.The appellant/Insurance Company being insurer of the said lorry filed counter statement denying the averments made by the 1st respondent and stated that the 1st respondent came suddenly in the middle of the road and thus the accident has occurred. The 1st respondent has added the 4th respondent as a formal party, as the insurance policy stood in his name. When any transaction is taken place in respect of the vehicle to be transferred in the name of the original owner and in the absence of such condition being not complied, the appellant is not liable to pay any compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, nature of injuries and treatment taken by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, one Thulasi, the mother of the 1st respondent was examined as P.W.1 and seven documents were marked as Exs.P1 to P7. The appellant/Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, the driver of the lorry belonging to the 3rd respondent and directed the respondents 2 and 3 and the appellant/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.94,000/- as compensation to the 1st respondent.

8.Against the said award dated 16.06.2010 made in M.C.O.P.No.1363 of 2005, the appellant/Insurance Company has come out with the present appeal challenging the liability fastened on them.

9.The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent was a passenger in the lorry and she was not a third party. The Tribunal failed to appreciate the Accident Register of Coimbatore Medical College Hospital, which was recorded at 10.15 a.m., wherein it is stated that the 1st respondent was an occupant in the lorry. Subsequently, F.I.R and the Police records have been manipulated for the purpose of claiming compensation against the appellant. The Tribunal failed to appreciate that the appellant is not liable to pay the compensation and the Tribunal ought to have dismissed the claim petition and prayed for setting aside the award of the Tribunal.

10.Though notice has been served on the 1st respondent and her name is printed in the cause list, there is no representation for the 1st respondent either in person or through counsel.

11.Though the respondents 3 and 4 have entered appearance through their counsel, there is no representation on behalf of them either in person or through their counsel at the time of arguments.

12.Heard the learned counsel appearing for the appellant/Insurance Company and perused the entire materials on record.

13.From the materials on record, it is seen that it is the case of the 1st respondent that while she and her sister were walking on the left hand side of the road to go to school, the bricks laden lorry belonging to the 3rd respondent, which was coming from behind, driven by the 2nd respondent in a rash and negligent manner at high speed without any control, turned to its right side and got capsized. The 1st respondent and her sister were hit by the lorry and got injured. To prove the said contention, the mother of the 1st respondent was examined as

P.W.1 and marked F.I.R. as Ex.P1 and other documents as Exs.P2 to P7. The appellant/Insurance Company in their counter statement stated that the 1st respondent suddenly came to the middle of the road and invited the accident. The 2nd respondent, the driver of the lorry is not responsible for the accident. The appellant has not examined the driver of the lorry or any witness to substantiate their contention. In the absence of any evidence contrary to the evidence of P.W1 and contents of F.I.R., the Tribunal held that the accident has occurred only due to the rash and negligent driving by the 2nd respondent, the driver of the lorry and awarded compensation. The appellant now raises a new ground contending that the 1st respondent was an occupant of the lorry and the appellant is not liable to pay compensation. The Tribunal failed to appreciate the Accident Register and the fact that the 1st respondent was an occupant of the lorry. The appellant has not raised this issue before the Tribunal in the counter statement and has not let in any oral and documentary evidence to substantiate their contention now raised in the appeal. It is not open to the appellant to raise a new ground without any averments in the counter statement as well as any evidence before the Tribunal. In view of the above, the present appeal is devoid of merits and is liable to be dismissed.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.94,000/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The respondents 2 and 3 and the appellant/Insurance Company are jointly and severally 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 award of the minor 1st respondent is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The mother of the minor, the 1st respondent viz., Thulasi, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The I Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Coimbatore.

Copy to

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

C.M.A.No.2692 of 2013
and M.P.No.1 of 2013

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