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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.260 of 2015

The New India Assurance Co. Ltd.,
Divisional office I (720100)
435, DB road, RS puram
Coimbatore-2.

... Appellant /3rd Respondent

Vs.

1.Khader maideen
2.Amshabegam
3.Khandasamy
4.Balakrishnan
5.Arunthangam
6.United India Insurance Co. Ltd.,
9/1/2 Ramakrishnapuram (North)
Karur-1. ... Respondents/Petitioners/Respondents 1,2,4,5

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.08.2014 made in M.C.O.P.No.691 of 2010 on the file of Motor Accident Claims Tribunal, Additional District Court No.III, Dharapuram.

For Appellant : Mr.E.Rajadurai for
Mr.N.Vijayaraghavan

For R1 and R2 : Mr.MA.P.Thangavel

For R3 : No Such Address

For R4 and R5 : No appearance

For R6 : Mr.Paranthaman



J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 05.08.2014 made in M.C.O.P.No.691 of 2010 on the file of Motor Accident Claims Tribunal, Additional District Court No.III, Dharapuram.

2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.691 of 2010 on the file of Motor Accident Claims Tribunal, Additional District Court No.III, Dharapuram. The respondents 1 and 2 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of their son viz., Nazirudeen, who died in the accident that took place on 17.05.2010.

3.According to the respondents 1 and 2, while the deceased was driving a Maruthi omni car from Annur to Katchai Katti on Tiruppur to Dharapuram road, near Vengipalayam, a tempo van, which was coming in the opposite direction, driven by the 3rd respondent in a rash and negligent manner, dashed against the Maruthi omni car and caused the accident. The 4th respondent is the owner and the appellant is the insurer of the tempo van. The 5th respondent is the owner and 6th respondent is the insurer of the Maruthi omni car. In the accident, the deceased died on the way to hospital. Therefore, the respondents 1 and 2 have filed the above claim petition claiming compensation.

4.The respondents 3 to 6 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 accident occurred solely due to rash and negligent driving by the deceased. The respondents 1 and 2 have to prove that the 3rd respondent, driver of the tempo van was possessing valid driving license at the time of accident and the tempo van was insured with the appellant/Insurance Company.

6.Before the Tribunal, the 1st respondent, father of the deceased, examined himself as P.W.1 and one Paulraj, eye-witness was examined as P.W.2 and marked seven documents as Exs.P1 to P7. The appellant 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



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rash and negligent driving by the 3rd respondent/driver of the tempo van belonging to the 4th respondent and directed the appellant/Insurance Company being insurer of the said tempo van to pay a sum of Rs.5,70,000/- as compensation to the respondents 1 and 2.

8. Against the said award dated 05.08.2014 made in M.C.O.P.No.691 of 2010, granting compensation to the respondents 1 and 2, 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 failed to consider that the accident has occurred only due to rash and negligent driving by the deceased. The Tribunal erred in fastening the entire liability on the appellant, when the accident occurred only due to negligence on the part of the deceased. The accident occurred due to head on collision and the Tribunal ought to have fixed contributory negligence on the part of the deceased. The Tribunal failed to consider that in a connected three similar cases, 50 : 50 liability was fixed on the appellant/Insurance Company as well as 6th respondent, insurer of the Maruthi omni car driven by the deceased. The compensation awarded by the Tribunal is excessive and prayed for allowing this appeal.

10. Per contra, the learned counsel appearing for the respondents 1 and 2/claimants contended that the accident has occurred only due to rash and negligent driving by the 3rd respondent/driver of the tempo van belonging to the 4th respondent. The appellant did not examine any witness to disprove the same. The Tribunal after considering all the materials available on record in proper perspective, has rightly fixed negligence on the 4th respondent and liability on the appellant and awarded compensation, which is not excessive and prayed for dismissal of the appeal.

11. Though notice was served on the respondents 4 & 5 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

12. Heard the learned counsel appearing for the appellant/New India Assurance Company as well as the learned counsel appearing for the respondents 1 & 2 and the learned counsel appearing for the 6th respondent/United India Insurance Company and perused the materials available on record.

13. From the materials available on record, it is seen that the respondents 1 and 2 have filed the claim petition for the



death of their son alleging that the accident has occurred due to rash and negligent driving by the 3rd respondent/driver of the tempo van belonging to the 4th respondent, insured with the appellant. The respondents 1 and 2 to substantiate the said contention, have examined P.W.2/eye-witness and marked Ex.P1/F.I.R., which was registered against the 3rd respondent/driver of the tempo van. The appellant/Insurance Company has not let in any contra evidence to disprove the evidence of P.W.2. It is the further contention of the learned counsel appearing for the appellant/Insurance Company that in view of the head on collision of both the vehicles, the Tribunal ought to have fixed contributory negligence on the part of the deceased. In every head on collision, contributory negligence cannot be fixed automatically. A person, who is alleging contributory negligence must let in acceptable evidence before the Tribunal to substantiate their case. In the present case, the appellant has not let in any evidence to show that the deceased was also responsible for the accident. The appellant has not examined the driver of the tempo van or any other independent witness to disprove the contentions of the respondents 1 and 2. As far as the contention raised now in the grounds of appeal that the Tribunal failed to consider the award passed in three similar cases, where liability was fixed as 50:50 on the appellant/Insurance Company and 6th respondent/Insurance Company is concerned, no copy of the award was filed before the Tribunal. The Tribunal has appreciated all the above materials in proper perspective and held that the accident occurred solely due to rash and negligent driving by the 3rd respondent/driver of the tempo van belonging to the 4th respondent insured with the appellant/Insurance Company. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, the Tribunal after considering both oral and documentary evidence let in by the respondents 1 and 2, awarded compensation to them, which is not excessive and the same does not warrant any interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.5,70,000/- awarded by the Tribunal as compensation to the respondents 1 & 2/claimants, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire award amount 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 respondents 1 & 2/claimants are permitted to withdraw the award amount, as per



the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

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//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge No.III
Motor Accident Claims Tribunal
Dharapuram.

2.The Section Officer
VR Section
High Court
Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.1536
+1cc to Mr.Ma.P.Thangavel, Advocate SR.1093
+1cc to Mr.C.Paranthaman, Advocate SR.720

C.M.A.No.260 of 2015

AK(CO)
CB(18/09/2020)