

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2020

CORAM :

THE HONOURABLE MR.JUSTICER.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal No. 1611 of 2020

United India Insurance Co., Ltd.,
Motor Third Party Claims Hub
No.134, Silingi Buildings
4th Floor, Grems Road
Chennai - 600 006 ... Appellant/2nd Respondent

Versus

1. Senthamarai
2. Sathya (Minor)
rep. by her mother and next friend
Senthamarai/first respondent
3. Neelavathy
4. Kuppusamy ... Respondents 1 to 4/ Petitioners
5. P. Uma Mageshwari ... 5th Respondent

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Order and Decretal Order dated 27.09.2019 passed in M.C.O.P. No. 4963 of 2016 on the file of Special Subordinate Judge-II, Small Causes Court (MACT), Chennai.

For Appellant : Mr. P. Sankaranarayanan
For Respondent : Mr. K. Varadha Kamraj for RR1 to 4
fifth respondent was set exparte

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The appellant is the second respondent in the claim petition filed by the respondents 1 to 4 herein in M.C.O.P. No. 4963 of 2016 on the file of the learned Special Subordinate Judge-II, Small Causes Court (MCOP), Chennai. After contest, by award dated 27.09.2019 passed in the aforesaid case, the Tribunal directed the appellant herein to pay 90% of the compensation amount determined by it to the claimants, while fixing 10% towards contributory negligence of the deceased himself. Aggrieved by the fixation of 90% liability on their part, the present appeal is filed by the Insurance Company.

2. On perusal of the Claim Petition filed by the claimants in MACTOP No. 4963 of 2016, it is evident that the deceased Sakthivel was working as a Bus Driver in Sri Velayudum Travels, Udayarpalem, Ariyalur District. On the fateful day on 27.09.2015 at about 04.00 hours, the deceased, who had driven a SVT bus to Tirupati, had parked it in Link Bus Stand at Tirupati. Thereafter, the deceased proceeded to take rest underneath a bus bearing Registration No. TN 30 AC 1919 belonging to Montee Travels, which was parked nearby. Unfortunately, the driver of the bus bearing Registration No. TN 30 AC 1919, without noticing the deceased sleeping beneath the bus, had started it, with the result, the deceased was run over by the said bus. According to the claimants, who are the legal heirs of the deceased, the accident had occurred due to the sheer negligence of the driver of the bus bearing TN 30 AC 1919, who failed to exercise caution while starting the bus, without even noticing the deceased sleeping underneath the bus. Therefore, they have filed the claim petition against the first respondent/owner (fifth respondent in this appeal) as well as the appellant/Insurance Company claiming a total sum of Rs.19,00,000/- as compensation.

3. On behalf of the appellant/Insurance Company, a counter statement was filed before the Tribunal repudiating the averments made in the claim petition. According to the appellant, the accident had taken place due to the own negligence of the deceased, who ought not to have slept underneath a parking bus knowing fully well that the vehicle is likely to be started at any time. The appellant also denied the age, avocation and income of the deceased and prayed for dismissal of the claim petition.

4. Before the Tribunal, on behalf of the claimants, the first claimant, who is the wife of the deceased, examined herself as PW1 and one Gnanasekaran, who had witnessed the accident, was examined as PW2. The claimants have also filed Exs. P1 to P12 on their side. On behalf of the respondents in the claim petition, neither any witness examined nor any document marked.

5. The Tribunal, upon consideration of the oral and documentary evidence, has concluded that the death of the deceased was as a result of sheer negligence on the part of the driver of the bus owned by the second respondent, which was insured with the appellant/insurance company.

6. Before the Tribunal, it was contended by the claimants that the deceased was in receipt of Rs.18,000/- as monthly income. However, the Tribunal, finding that the claimants have not filed any documentary evidence to substantiate the income of the deceased, has fixed his notional income at Rs.12,500/- per month and added 40% thereof towards future prospectus to arrive at a sum of Rs.17,500/- per month as notional income. After deducting one fourth of the amount towards personal expenses and by applying multiplier '16', a sum of Rs.25,20,000/- was awarded

towards loss of earning of the deceased. That apart, the Tribunal awarded various amounts towards non-pecuniary benefit and awarded a total sum of Rs.28,10,000/-. The break-up details of the amounts awarded by the Tribunal is as under:-

Loss of Income	Rs.25,20,000.00
Loss of consortium to wife	Rs. 40,000.00
Loss of amenities	Rs. 15,000.00
Funeral expenses	Rs. 15,000.00
Loss of love and affection	Rs. 1,00,000.00
Loss of parental care	Rs. 40,000.00
Filial consortium	Rs. 80,000.00

Total	Rs.28,10,000.00

7. Out of this amount, the insurance company was directed to pay 90% towards their liability being Rs.25,29,000/-, while 10% was fixed towards the contributory negligence of the deceased himself.

8. The learned counsel for the appellant/Insurance company would contend that the deceased himself was a driver by profession and he ought not to have slept underneath a stationary bus knowing fully well the consequences of the starting of the bus. Further, the driver of the offending bus did not notice the deceased sleeping underneath the bus inasmuch as it was early morning 4.00 am when the vicinity was dark and poorly illuminated. Even otherwise, the driver of the offending bus had parked the bus only in the parking bay properly where the deceased is not supposed to sleep underneath a stationary bus. The Tribunal, without considering the negligence on the part of the the deceased had mulcted the appellant insurance company with 90% liability to pay the compensation amount, which is on the higher side. According to the learned counsel for the appellant, in a case of this nature, the Tribunal could have fixed 50% contributory negligence on the part of the deceased instead of fixing only 10%. Therefore, the learned counsel for the appellant prayed for modification of the award passed by the Tribunal.

9. The learned counsel for the respondents 1 to 4/claimants would only justify the liability fixed by the Tribunal against the Insurance Company and prayed for dismissal of the appeal.

10. We have heard the counsel for both sides and perused the materials placed on record. Admittedly, on the fateful day, the deceased himself had driven a S.V.T. bus and parked it in the parking bay. After parking the bus, he proceeded to take rest and therefore slept underneath a stationary bus bearing Registration No. TN 30 AC 1919 belonging to the fifth respondent in this appeal. The driver of the said bus, without noticing the deceased sleeping underneath, had, moved

the bus, as a result of which, the deceased was crushed to death. In our opinion, the driver of the bus ought to have exercised prudence and caution, before attempting to move the bus, but he failed to do so. By reason of the negligence attributable on the part of the driver of the bus, the deceased had lost his life at a young age and the claimants have lost their only bread winner in the family. Having regard to the entire facts and circumstances of the case, we feel that the Tribunal is wholly justified in fixing 90% liability on the part of the appellant-insurance company. We do not find any reason to interfere with the award passed by the Tribunal.

11. In the result, we confirm the Order dated 27.09.2019 passed in M.C.O.P. No. 4963 of 2016 on the file of Special Subordinate Judge-II, Small Causes Court (MACT), Chennai. The Civil Miscellaneous Appeal is dismissed. No costs. The appellant-Insurance Company is directed to deposit the entire compensation amount determined by the Tribunal with accrued interest, within a period of eight weeks from the date of receipt of a copy of this judgment, after adjusting the amount, if any, already deposited.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsh
To

1. The Special Subordinate Judge-II
Small Causes Court (MACT), Chennai

Copy to

The Section Officer
Vernacular Records Section
High Court, Madras

+1cc to Mr.P.Sankaranarayanan, Advocate SR.No. 36871

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No. 36531

CMA No. 1611 of 2020

MP (CO)

A.SK(08.07.2021)