

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.02.2020

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.149 of 2018
and
C.M.P.No.1859 of 2018

United India Insurance Co. Ltd.,
13A, Nethaji Road, Manjakuppam,
Cuddalore ... Appellant/2nd Respondent

vs.

- 1.C.Meenakshi
- 2.C.Uma
- 3.C.Karthik Raja ... Respondents 1 to 3/Petitioners
- 4.S.Bharathi, S.Rararejeshwari,
S.Vishalachi, S.Shanmugapriya,
Suseela Mathiyalagan
M/s Shanmugam Bus Service, 6/34
South Street, Vilandhai, Andimadam,
Ariyalur District - 621 801.
- 5.The Divisional Manager,
New India Assurance Co., Ltd.,
D.O.No.1, Bharathi Road, 2nd Floor,
Woodlands Building,
Cuddalore - 607 001.

... Respondents 4 and 5/Respondents 1 and 3

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.1835 of 2011 dated 12.01.2017 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore.

For Appellant : Mr.S.Arun Kumar

For Respondents : Ms.S.Ramya V.Rao
for Mr.A.N.Viswanatha Rao
for R1 to R3
Mr.M.Krishnamoorthy for R5

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant is the insurer of the bus involved in the accident along with the vehicle driven by the deceased. The contesting respondents are the wife and children of the deceased. The Tribunal awarded a compensation of Rs.78 lakhs by fixing the liability at 90% on the part of the driver of the bus which is insured with the appellant. Resultantly, 10% has been fixed on the deceased himself. Challenging the liability and quantum, the present appeal has been filed by the insurance company.

2.Learned counsel appearing for the appellant submitted that the Tribunal has totally misdirected itself with respect to the liability. A perusal of Ex.P1 would clearly show that the deceased was driving the vehicle at a high speed, thereafter, dashed against the bus insured with the appellant on the left hand side of the bus. This was also due to the reason that the tyre of the car driven by the deceased got burst. Therefore, he lost control. If that is the case, there is no basis for fixing the liability on the part of the appellant. Even on the quantum, the Tribunal has committed an error in fixing it at Rs.70 lakhs. Therefore, the award of the Tribunal requires interference.

3.Learned counsel appearing for the insurer of the car driven by the deceased submitted that the deceased being the owner of the vehicle, in the absence of any comprehensive policy, no liability can be fastened on it.

4.Learned counsel appearing for respondents 1 to 3/claimants submitted that what is to be seen is a just compensation. A factual finding has been given by the Tribunal on negligence on the part of the driver of bus insured with the appellant. Therefore, the appeal will have to be dismissed.

5.We have perused the records especially the evidence adduced along with the documents marked.

6.The Tribunal took into consideration Ex.P1 - First Information Report. The fact that the deceased was driving the car speedily and lost control due to the tyre of the car driven by him having burst is not in dispute. Similarly, the fact that the car dashed against the left hand side of the bus is also not

in dispute. To that extent, the Tribunal has totally misdirected itself. Perhaps, the Tribunal was conscious of the fact, though for a wrong reason that the claimants cannot get any compensation from the insurer of the vehicle driven by the deceased, being the owner. This cannot be a factor to manipulate the extent of liability and fasten it on the appellant. Though we find the compensation is also bit excessive, we are not inclined to interfere with the same as the claimants are three in number and any such exercise would reduce the quantum fixed.

7. We have no difficulty in holding that the major part of the accident has occurred due to the bursting of the tyre of the car driven by the deceased. Though it might be called as an act of God, suffice it to state that the appellant cannot be fastened with the liability at 90% in view of the clear facts established. However, the driver of the vehicle insured with the appellant has not been examined. Therefore, the appellant cannot be exonerated in toto. In such view of the matter, considering the facts of the case, we are inclined to fix the liability at 50% on the part of the appellant. Inasmuch as the insurer of the car driven by the deceased is not liable, as there is no policy touching upon the liability on the part of such insurer, we are not inclined to fasten it with any payment of compensation. Therefore, while confirming the quantum of Rs.78 lakhs, the liability of the appellant is fixed at 50%. Therefore, the appellant is bound to pay 50% of the quantum i.e. Rs.39 lakhs and the insurer of the car driven by the deceased is exonerated. The interest awarded by the Tribunal at 8% per annum shall stand confirmed. The compensation shall be apportioned amongst the claimants in the same ratio as ordered by the Tribunal.

8. In such view of the matter, the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

9. The appellant insurance company is directed to deposit the compensation liable to be paid by it along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.1835 of 2011 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Cuddalore within a period of eight weeks from the date of receipt of a copy of the judgment. If the amount has already been deposited, the appellant insurance company is entitled to withdraw the excess amount, if any.

10.We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank accounts of the claimants within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimants are entitled to withdraw the same.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Principal District Judge, Cuddalore.

+1cc to Mr.S.Arunkumar, Advocate Sr.10362

+1cc to Mr.Krishnamoorthy, Advocate Sr.10337

+2cc to Mr.A.N.Viswanatha Rao, Advocate Sr.10486

C.M.A.No.149 of 2018

sj[col]
srg 17/08/2020

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