

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2590 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
Oriental Insurance Co. Ltd.,
Gopalarav Library Building,
Town Hall Road, Kumbakonam City,
Kumbakonam Taluk & Munsif. ... Appellant/2nd Respondent

Vs.

1.Vijayalakshmi
2.Minor Suryaprakash
3.Minor Chandra Prakash
(Minors 2 & 3 represented by their
mother and guardian 1st respondent)
..Respondents 1 to 3/Petitioners
4.R.Thirunavukkarasu ..4th Respondent/1st Respondent
5.Vedhanayagam ..5th Respondent/3rd Respondent
6.Lalitha ..2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 15.04.2013 made in M.C.O.P.No.3 of 2008 on the file of Motor Accidents Claims Tribunal, Chairman, District Judge, Thiruvarur.

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

For RR1 to 3 : Mr.S.Giritharan
For RR4 to 6 : Served - No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 15.04.2013 made in M.C.O.P.No.3 of 2008 on the file of Motor Accidents Claims Tribunal, Chairman/District Judge, Thiruvarur.

2. The appellant is the second respondent in M.C.O.P.No.3 of 2008 on the file of Motor Accident Claims Tribunal, Chairman/District Judge, Thiruvarur. The respondents 1 to 3 herein have filed the above said claim petition claiming a sum of Rs.6,00,000/- as compensation for the death of Palanivel, who died in a road accident that took place on 15.06.2008.

3. The case of the prosecution is that on 15.06.2008 at about 9.00 P.M., the deceased was riding his motor cycle bearing Registration No.TN 49 P 7818 at Thiruvarur - Mannargudi Road, at that time the fourth respondent's Mahendra van bearing Registration No.TN 49 A 4014 driven by his driver in a rash and negligent manner, dashed against the deceased and he sustained serious injuries. Then he died in the hospital. Prior to the accident, the deceased was hale and healthy and he is aged about 35 years. He was working as a tailor and his monthly income was Rs.7,500/- per month.

4. Denying the allegations, the appellant/Insurance company has filed a counter affidavit stating that the accident occurred only due to the negligent act of the deceased. Moreover, the age, income and employment of the deceased are denied and the amount of compensation claimed is highly excessive.

5. During the trial before the Tribunal, on the side of the petitioner, the petitioner herself was examined as PW1 and marked certain documents as Exs.P1 to P5 and one Mr.Rajendran was examined as PW2. On the side of the second respondent/Insurance company three witnesses were examined as RW1 to RW3 and two documents were marked as Exs.R1 and R2.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligent driving of the driver of the fourth respondent herein and directed the appellant/Insurance company herein as the insurer of the fourth respondent's vehicle, to pay a sum of Rs.6,27,000/- as compensation to the petitioners/respondents 1 to 3 herein. Challenging the said award dated 15.04.2013 made in M.C.O.P.No.3 of 2008, the appellant/Insurance company has come out with the present appeal.

7. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fixing negligence on the part of the appellant herein, without properly appreciating the materials on record. RW1 and RW2 have deposed in their evidence that the accident was purely due to rash and negligent act of the deceased. The deceased drove his vehicle with drunken state and talking through cellphone to some one.

When the appellant/Insurance Company is not liable to pay any compensation, the Tribunal erred in awarding the compensation. In any event, the total compensation awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

8. Heard Mr.E.Rajadurai, learned counsel appearing for the appellant/Insurance Company and Mr.S.Giritharan, learned counsel appearing for the respondents 1 to 3.

9. Perused the materials available on record. On perusal of F.I.R.-Ex.P1, it is clearly seen that the fourth respondent's driver was responsible for the accident. PW1 and PW2 deposed in their evidence that the accident occurred due the rash and negligent driving of the driver of the fourth respondent. The appellant/Insurance company has not filed any document to show that the deceased drove his vehicle with drunken state, and talking through cellphone. The Post-mortem report also shows no such findings. In the absence of any material evidence to prove that the deceased was at fault, there is no error in the above findings of the Tribunal warranting interference by this Court and the appeal filed by the appellant/Insurance company is without any merits and the same is liable to be dismissed.

9. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed. The Appellant/Insurance Company is directed to deposit the 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 respondent Nos.1 to 3, 5 & 6 are permitted to withdraw the award amount along with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. The apportionment awarded by the Tribunal is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rsi
To

1.The Chairman/District Judge (Motor Accidents Claims Tribunal),
Thiruvaurur.

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

+1 CC to Mr.S.Giritharan, Advocate sr 8314.

+1 CC to Mr.N.Vijayaraghavan, Advocate sr 9156.

C.M.A.No.2590 of 2014
and
M.P.No.1 of 2014

JP (CO)
SP (02/12/2020)



WEB COPY