

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2608 OF 2014

M/s.ICICI Lombard General
Insurance Co. Ltd., Zenith House,
Keshavarao Khadge Marg,
Opp. To Race Course,
Mahalakshmi, Mumbai. ... Appellant/2nd Respondent

...Vs...

1. Venkatachalam
2. Tamilselvan
3. Kewal Krishnan Mehinndratta
(3rd respondent set ex-parte in Lower Court)
... Respondents/Respondents 1 to 3

Prayer:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.06.2012 made in MCOP. No.621 of 2006 on the file of the Motor Accident Claims Tribunal, (1st Additional District Judge) Salem.

For Appellant : Mrs.R.Sree Vidhya

For Respondents: M/s.Nithyesh and Vaibhav - R1 & R2
R3 - Given up

JUDGMENT

(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the Insurance company challenging the impugned award dated 26.06.2012 passed by the Motor Accident Claims Tribunal (I Additional District Judge), Salem in MCOP.No.621 of 2006.

2. The appellant/Insurance Company has filed this appeal only on the ground that they are not liable to compensate the claimants, since the entire negligence is on the part of the deceased.

3. The respondents 1 and 2 are the legal representatives of the deceased Baby, who died on 02.06.2005 as a result of an accident caused by a Car viz., Ford Ikon bearing Registration No.TN 09 AJ 6900, owned by the third respondent and insured with the appellant/insurance company. The claimants/respondents 1 & 2 have preferred a claim before the Motor Accident Claims Tribunal (I Additional District Judge), Salem in MCOP.No.621 of 2012 seeking compensation for the death of Baby (deceased).

4. The Motor Accident Claims Tribunal, under the impugned award, directed the appellant/insurance to pay a sum of Rs.5,72,950/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization and costs as compensation to the claimants, who are the husband and son of the deceased.

5. The break-up details of the award passed by the Tribunal in favour of the respondents/claimants are as follows:

Head	Award passed by the Tribunal (Rs.)
Loss of dependency	5,40,000/-
Medical Expenses	2,950/-
Loss of consortium	10,000/-
Transportation	5,000/-
Loss of Estate	10,000/-
Funeral expenses	5,000/-
Total	5,72,950/-

6. Heard Mrs.R.Sree vidhya, learned counsel for the appellant /Insurance company and Mr.Nithi yadesh, learned counsel for the respondents 1 and 2.

7. Before the Tribunal, the claimants have filed twelve documents, which were marked as Exs.P1 to P12 and three witnesses were examined on their side, namely, PW1 and PW3 are the husband and son of the deceased, PW2 - Mr.Kandasamy, an eyewitness to the accident. On the side of the respondents, four documents were filed, which were marked as Ex.R1 to Ex.R4 and two witnesses were examined as RW1 and RW2 viz., Vijay - driver of the insured Car as RW1 and Mr.Lakshmana Kumar, an insurance company official as RW2 before the Tribunal.

8. The contention raised by the appellant/Insurance Company in this appeal was also raised by them before the Tribunal, as seen from the counter statement filed by them as well as by

their depositions. The Tribunal has considered the said defence raised by the appellant/insurance company, but however, rejected the same. The relevant portion of the order is extracted hereunder:

''9. The counsel for the petitioners submits that the eyewitnesses to the occurrence was examined before this Court as PW2 wherein he has categorically stated that the two wheeler bearing Registration No.TN 09 AJ 6900 was coming from Salem to Sankari near Rajaji Polytechnic, Erikkarai Bus stop. The car was running in a rash and negligent manner and hit on the back side of the two wheeler and caused injury to the driver of the two wheeler Mr.Kumar and the pillion rider viz., Baby. Immediately both of them fell unconscious and they were taken to hospital. To contradict the evidence of PW2 the respondents have examined the driver of the car as RW1. He has deposed in the cross-examination that immediately after the occurrence both the persons who are travelling in a two wheeler fell unconscious. He further admitted that he has deposed contra to the statement made in the FIR at the time of recording his evidence before the Judicial Magistrate. This court has perused the copy of the judgment in CC. No.444/2005 passed by the learned Judicial Magistrate No.IV, Salem, where the criminal case registered against the driver of the two wheeler was tried and in the said case the RW1 was examined in the criminal case as PW5 wherein he has deposed that on 26.05.2005 when he was driving his car near Rajaji Polytechnic from the right side pathway suddenly the accused therein i.e. Kumar was entered to the main road and stopped without showing any signal and due to the sudden stoppage of his two wheeler, PW5 have also stopped the car suddenly even then the car has hit the two wheeler said to have been travelled by the deceased Baby and its rider Kumar. This evidence is contrary to the evidence given before this Court. On the basis of the deposition given by PW5 i.e. RW1 herein the Criminal case have been entered in acquittal. Since the RW1 has deposed contrary to his evidence recorded in the criminal case, this Court cannot accept the evidence given by RW1 in this case. Hence, the evidence given to contradict the evidence of the PW2 is not acceptable and this Court hold that the driver of the two wheeler is not responsible for the accident and the same has been proved before this Court.''

9. Any compensation claim before the Motor Accident Claims Tribunal, is adjudicated based on preponderance of probabilities. Based on the materials and evidence available on record, the Tribunal has come to the right conclusion that the driver of the insured vehicle is alone responsible for the cause of the accident, which resulted in the death of Baby.

10. This Court has also perused and examined the materials available on record and it does not find any perversity or illegality in the findings given of the Tribunal under the impugned award.

Conclusion:

11. For the foregoing reasons, there is no merit in this appeal. Accordingly, this Appeal shall stand dismissed.

12. The Appellant/Insurance Company is directed to deposit the entire Award amount together with interest from the date of claim petition till the date of deposit and costs, as assessed by the Tribunal, after deducting the amount, if any, already deposited to the credit of MCOP.No.621 of 2006, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the respondents 1 and 2 /claimants through RTGS within a period of two weeks thereafter.

13. In the result, this appeal is dismissed. There is no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
I Additional District Judge, Salem.
2. The Section Officer
V.R.Section, High Court of Madras.

C.M.A.No.2608 of 2014

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