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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3105 of 2014
and M.P. No.1 of 2014

M/s. ICICI Lombard General
Insurance Co. Ltd.,
Zenith House,
Kesavarao Khadya Marg,
Opposite to Race Course,
Mahalakshmi,
Mumbai 400 034.

.. Appellant/2nd Respondent

Vs.

1.Alagesan

2.Ananthi

3.G. Pazhamalai

.. Respondents/Petitioners 1 & 2/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2012, made in M.C.O.P. No.1 of 2011, on the file of the Principal District & Sessions Court, (Motor Accident Claims Tribunal), Ariyalur.

For Appellant : Mrs.R.Sree Vidhya

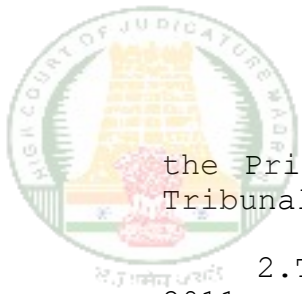
For Respondents : Mr.C.Jagadish (For R1 & R2)

Mr.S.Gunalan (For R3)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 30.01.2012, made in M.C.O.P. No.1 of 2011, on the file of



the Principal District & Sessions Court, (Motor Accident Claims Tribunal), Ariyalur.

2.The appellant is the 2nd respondent in M.C.O.P. No.1 of 2011, on the file of the Principal District & Sessions Court, (Motor Accident Claims Tribunal), Ariyalur. The respondents 1 & 2/claimants filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the death of one Arivazhagan, who died in the accident that took place on 27.01.2008.

3.According to the respondents 1 & 2, on the date of accident, when the deceased was walking along North-South road near Arul Oil Mill, Kodukur, the driver of the Tractor bearing Registration No.TN-46-E-4039 attached with Trailers bearing Registration No.TN-46-C-4005 and TN-31-S-5653, belonging to the 3rd respondent drove the same in a rash and negligent manner and dashed against the deceased and caused the accident. In the accident, the deceased succumbed to fatal injuries. The accident occurred due to rash and negligent driving by the driver of the Tractor-Trailers belonging to the 3rd respondent and hence, the respondents 1 & 2 filed the claim petition claiming compensation against the appellant as insurer and 3rd respondent as owner of the said vehicle.

4.The 3rd respondent, filed counter statement and denied all the averments made by the respondents 1 & 2 in the claim petition. According to the 3rd respondent, on the date of accident, the Tractor attached with two Trailers were driven slowly along with sugarcane load. The deceased being a minor, crossed the road negligently and unexpectedly dashed against the Tractor and invited the accident. The accident occurred due to negligence of the deceased. In any event, the 3rd respondent is not entitled to pay compensation to the respondents 1 and 2, as the Tractor-Trailers were insured with the appellant at the time of accident. Hence, the appellant is liable to indemnify the 3rd respondent and prayed for dismissal of the claim petition as against the 3rd respondent.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 & 2 in the claim petition. According to the appellant, on the date of accident, the Tractor attached with two Trailers were loaded with sugarcane and the deceased being a minor, trying to take sugarcane from the 2nd Trailer, slipped down and 2nd Trailer ran over his body and caused the accident. The 2nd Trailer was not insured with the appellant. Hence, the appellant is not liable to pay any compensation to the respondents 1 and 2. In any event, the respondents 1 & 2 have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed is excessive and prayed for dismissal of



the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, examined eye witness as P.W.2 and marked 3 documents as Exs.P1 to P3. The appellant examined its Official as R.W.1 and marked 1 document as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Tractor-Trailers belonging to the 3rd respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.3,25,000/- as compensation to the respondents 1 & 2.

8. Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 30.01.2012, made in M.C.O.P. No.1 of 2011, 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 see that the respondents 1 and 2 have failed to establish the negligence on the part of the driver of the Tractor along with two Trailers. The accident occurred only due to the negligence on the part of the deceased. At the time of accident, the deceased trying to take sugarcane from the 2nd Trailer, jumped and in the process, he fell down and sustained fatal injuries. The Tribunal failed to see that the 3rd respondent has violated the policy condition and operation of policy was suspended at the time of accident. The 3rd respondent ought to have used only one Trailer to be attached with Tractor. In violation of policy and permit condition, the 3rd respondent used two Trailers and caused accident. Hence, no liability can be fastened on the appellant and prayed for setting aside the award of the Tribunal.

10. The learned counsel appearing for the respondents 1 and 2 made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant-Insurance Company, respondents 1 and 2 as well as the 3rd respondent and perused the materials available on record.

12. From the materials on record, it is seen that it is the contention of the respondents 1 and 2 that while the deceased was proceeding from North to South, keeping left extreme on the road, the 3rd respondent vehicle which came in the same direction with great speed in a rash and negligent manner dashed against the deceased. The deceased fell down and 2nd Trailer's left front



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wheel ran over the deceased. The deceased sustained fatal injuries and died on the spot. To substantiate this contention, the respondents 1 and 2 have examined the 1st respondent as P.W.1 and eye witness as P.W.2 and marked FIR as Ex.P1, which was registered against the driver of the Tractor. The appellant contended that the deceased while trying to snatch a sugarcane from the 2nd Trailer, fell down and 2nd Trailer ran over him. According to the appellant, the accident is not due to rash and negligent driving by the driver of the Tractor. The appellant has not proved this contention by letting in any evidence. They relied on the contents of FIR wherein it has been stated that the deceased sustained fatal injuries when the 2nd Trailer ran over the deceased. The Tribunal granted more weightage to the evidence let in before it and accepted the evidence of P.W.2 and held that accident occurred due to rash and negligent driving by the driver of the Tractor and only 1st Trailer ran over the deceased. There is no error on the said finding of the Tribunal, warranting interference by this Court.

13.The second contention of the learned counsel appearing for the appellant-Insurance Company is that at the time of accident, the Insurance Policy was suspended and hence, no liability can be fastened on them. The appellant has not furnished any materials to show that policy was suspended at the time of accident and also not established the reasons for suspension of policy. No document was produced before the Tribunal to show that 3rd respondent was informed about the suspension of policy. Further, the appellant has not raised this issue before the Tribunal. Having failed to raise this issue before the Tribunal, it is not open to the appellant to raise the same now. In view of the above, the appeal is devoid of merits and is liable to be dismissed.

14.As far as the quantum of compensation is concerned, the Tribunal considering all the materials on record in proper perspective awarded compensation under different heads, which are not excessive, warranting interference by this Court.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.3,25,000/- awarded by the Tribunal together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant is directed to deposit the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.1 of 2011. On such deposit, the respondents 1 & 2 are permitted to withdraw their share of the award amount with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications



before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(CS IV)
Dt 26/03/2021

Sub Assistant Registrar

gsa

To

1. The Principal District & Sessions Judge,
(Motor Accident Claims Tribunal),
Ariyalur.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.41232

C.M.A. No.3105 of 2014

VBA(CO)
HS(11/08/2021)