IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.09.2020
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1942 of 2017

The Branch Manager
The Oriental Insurance Co.Ltd.
Vellore. ...Appellant/2nd Respondent

Vs

1.Annammal
2.Perumal ...Respondents/Petitioner/
Ist respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.06.2016 made in MCOP No.54 of 2011 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Cheyyar.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.S.Makesh for R1

JUDGMENT

This appeal has been preferred by the Insurance Company against the award of a sum of Rs.7,84,932/- towards compensation to the first respondent, due to the death of her son in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 31.03.2010, the deceased Sankar was riding his two-wheeler TVS Super XL bearing Reg.No.TN-25-U-9169 from Sevilimettu to Vembakkam. When he reached near Vembakkam Bye-Pass, at about 09.15 p.m., another two-wheeler (TVS Sports) bearing Reg.No.TN-25-S-7871, belonging to the second respondent and insured with the appellant Insurance Company, came in a rash and negligent manner and dashed against the deceased's vehicle. Due to the said impact, the deceased sustained grievous injuries on his head. He was admitted in the Kilpauk Government Hospital, Chennai and he succumbed to the injuries in the hospital. The first respondent is the mother of the deceased. She filed a claim petition before the Tribunal claiming a sum of Rs.8,44,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.7,84,932/-

with interest at the rate of 7.5% per annum from the date of claim petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal ought to have fixed the entire negligence on the deceased as the deceased rode the motorcycle after consuming alcohol and he was carrying bags containing liquor bottles on which fire broke out resulting in the fire accident and severe burn injuries leading to his death. It is also submitted that the deceased was not wearing helmet and rode an uninsured motorcycle with reckless speed. Thus, according to the learned counsel, the Tribunal ought to have fixed the entire liability on the part of the deceased and that the Insurance Company is not liable to pay any compensation to the claimant, except to the extent of no fault liability. On the other hand, it is submitted that the compensation awarded by the Tribunal is excessive.

5.The learned counsel for the first respondent / claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has arrived at the compensation, which is fair, just and reasonable and correctly fixed the liability on the part of the appellant Insurance Company and hence the judgment of the Tribunal does not require any interference at the hands of this Court.

6.Heard the learned counsel for the appellant/Insurance Company as well as the learned counsel for the first respondent and perused the materials available on record carefully.

7.With regard to the compensation awarded by the Tribunal, the Tribunal has relied upon the exhibits, evidence of witnesses, Legal Heirship Certificate, Death Certificate of the deceased, Post Mortem Certificate of the deceased and all other aspects in a proper perspective and has awarded the compensation amount under various heads to the claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and hence the same are confirmed.

8.With regard to the manner in which the accident took place, as per Ex.P1-First Information Report, it is seen that due to the dashing of the offending vehicle on the deceased's vehicle, the deceased sustained grievous injuries and consequently, the liquor bottles which he was carrying, fell down and a fire broke out and due to the same, he sustained burn injuries. The Tribunal has disbelieved the version that the accident had occurred only due to the liquor bottles, which were damaged in the accident, leading to fire, since there was head-on-collision between the two vehicles and awarded the compensation to be payable by the Insurance Company and the owner of the vehicle, jointly and severally, without fixing any negligence on the part of the deceased. But, it is seen from the report submitted by R.W.1-Chandrasekaran, Development Officer of the Insurance Company, that the deceased sustained 90% burn injuries consequent to the fire broke out on the liquor bottles. It is also the fact that there was head-on-collision between the two-wheelers. Taking note of the facts and circumstances of the case, this Court feels that the deceased ought to have been careful and vigilant in riding the two-wheeler, that too, when he was carrying liquor bottles. Thus, fixing 40% contributory negligence on the part of the deceased, would be proper.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The appellant Insurance Company and the second respondent herein, jointly and severally, are directed to pay 60% of the compensation amount awarded by the Tribunal, ie., Rs.4,70,959/- with interest at the rate of 7.5% per annum from the date of petition, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent is permitted to withdraw the same, on making proper application before the Tribunal.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

KM
To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Cheyyar.

Copy to:

The Section Officer,
VR Section, Madras High Court.

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