

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

C.M.A.No.35 of 2017

and

C.M.P.No.330 of 2017

M/s.New India Assurance Company Ltd.,
No.105, Big Street, 1st Floor,
Thiruvannamalai. ... Appellant/Respondent-II

Vs.

1.K.Rajendran ...Respondent I/Petitioner-I
2.R.Kumar ...Respondent-II/Petitioner II
3.Siva ... III Respondent/Respondent I

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.01.2013 made in M.C.O.P.No.157 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court at Arni, Thiruvannamalai District.

For Appellant : Mr.J.Chandran

For RR1 & 2 : Mr.P.Satheesh Kumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 18.01.2013 made in M.C.O.P.No.157 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court at Arni, Thiruvannamalai District.

2.The brief facts of the case are as follows:

The deceased Sudha engaged a tractor bearing Reg.No.TN-25-L-0190 belonging to the third respondent and insured with the appellant Insurance Company, for ploughing her land, and accordingly, on 28.07.2009, at about 01.45 p.m, she travelled in the said tractor. When the tractor reached near Suresh Chettiyar's land, on the opposite side of S.D.Rice Mill, the driver of the tractor drove it in a rash and negligent manner and due to the same, the deceased lost her balance and fell down from the tractor and consequently, the back wheel of the tractor

ran over on the head of the deceased, as a result of which, the deceased sustained fatal injuries. She was immediately rushed to the Government Hospital at Arni but she succumbed to injuries on the same day. Stating that the accident had occurred only due to the carelessness and negligence on the part of the driver of the tractor, the father and elder brother of the deceased filed a claim petition seeking compensation of Rs.6,50,000/-.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the driver of the tractor belonging to the 3rd respondent and directed the appellant/Insurance Company being insurer of the said tractor, to pay a sum of Rs.4,40,000/- as compensation to the respondents 1 & 2, at the first instance and recover the same from the 3rd respondent/owner of the vehicle.

4.Challenging the said award dated 18.01.2013 made in M.C.O.P.No.157 of 2009, granting compensation to the respondents 1 & 2, the appellant/Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant/Insurance Company has contended that the Tribunal has erred in ordering huge amount as compensation. It is submitted that the Tribunal has erred in ordering the Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the tractor. The Tribunal, without considering the prohibited rule of 243 Tamil Nadu Motor Vehicle Rules that "no person may sit nor any goods may be placed on the right of any transport vehicle fitted with right hand steering control" ought to have held that the deceased Sudha, in violation of rules, was sitting adjacent to the driver of tractor and invited the accident and therefore she is not entitled for compensation as she was a tort-feasor. The Tribunal, taking note of Rule 28 of the Rules of the road regulation 1989 that driver when driving a tractor shall not carry or allow any person to carry on the tractor, ought to have held that the driver and owner alone are liable to pay compensation, since the deceased was carried in mudguard without any seating facility as per registration certificate. It is also submitted that as per Sections 146, 147 and 149 of the Motor Vehicles Act, mudguard traveller shall not be covered either by statutory provision or even contractually and hence the Tribunal ought to have held that the appellant is not liable to indemnify the owner of the vehicle. On the other hand, it is also submitted that the amounts awarded by the Tribunal under various heads are excessive and exorbitant.

6.Per contra, the learned counsel appearing for the respondents 1 & 2/ claimants contended that the deceased was aged 19 years at the time accident. The Tribunal has not granted any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 & 2 and perused the materials available on record.

8.From the materials available on record, it is seen that the appellant/Insurance Company examined RW.1/officer of the Insurance Company and marked Exs.R1 to R6 to prove that the deceased travelled as mudguard traveller in the tractor and 3rd respondent has violated the policy conditions. As per the evidence of R.W.1, officer of the Insurance Company, it is seen that the tractor in question was insured for the use of agricultural purpose only, while the seating capacity is only one and its driver alone can travel in the tractor. But the appellant has not examined the driver of the tractor, who is the only competent person to speak about the accident. The tractor was insured with the appellant/Insurance Company and the policy was in force at the time of accident. In this connection, the Tribunal has held that only after getting permission from the driver of the tractor, the deceased travelled in the tractor. Further, the Tribunal has accepted the contention of the Insurance Company that the driver of the tractor has violated the policy conditions and relying upon the judgment of the Hon'ble Supreme Court in New India Assurance Co. Ltd. v. Darshana Devi [2008 ACJ(3) 1388] wherein it was held that "although the owner had contravened the contract of insurance, the insurance company cannot escape its liability in regard to third party risk, but was entitled to recover the amount of compensation from the insured, namely, the owner of the offending vehicle" and the materials on record, directed the appellant/Insurance Company to pay compensation to the respondents 1 & 2 at the first instance and recover the same from the 3rd respondent/owner of the vehicle. This Court is of the view that the Tribunal has correctly ordered for pay and recovery, after coming to know of the policy violation by the owner of the tractor and hence, the same warrants no interference.

9.As far as the quantum of compensation is concerned, from the award of the Tribunal, it is seen that deceased was aged 18 years at the time of accident and was earning a sum of Rs.20,000/- per month by doing agricultural work. The respondents 1 & 2 have not filed any documents to substantiate the said contention. In the absence of any documentary evidence,

the Tribunal, considering the fact that the accident is of the year 2009 and taking note of the age of the deceased, fixed a sum of Rs.3,000/- per month as notional income of the deceased, deducted 1/3rd of the amount towards personal expenses of the deceased, adopted the multiplier of 18 and awarded a sum of Rs.4,32,000/- towards loss of dependency, which is in order. The amounts awarded by the Tribunal towards funeral expenses at Rs.5,000/-, towards transportation expenses at Rs.2,000/- and towards loss of clothes at Rs.1,000/- are very reasonable and hence the same are confirmed.

10. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the entire compensation awarded by the Tribunal 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, at the first instance and thereafter recover the same from the 3rd respondent. On such deposit, the respondents 1 & 2 are permitted to withdraw their respective shares, as per the ratio of apportionment fixed by the Tribunal, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Arni, Thiruvannamalai District.

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

C.M.A.No.35 of 2017
and
C.M.P.No.330 of 2017

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