

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.996 of 2017
and
C.M.P.No.4910 of 2017

Iffco Tokio General Insurance Co., Ltd.,
28, (Old No.195), I & II Floor,
North Usman Road,
T.Nagar, Chennai - 600 017.Appellant/2nd Respondent

Vs

1.B.Lakshmi
W/o.Paulraj

2.P.Vel
S/o.Perumal

3.R.Rajeswari
W/o.D.Raj

....Respondents /Claimants

....Respondent/1st Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.06.2014 made in M.C.O.P.No.1366 of 2009, on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : No representation for R1
R2 & R3 Not ready in notice

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant / Insurance Company as against the award passed by the Tribunal for a sum of Rs.1,70,000/- towards compensation to the respondents 1 and 2.

2. The case in brief is as follows :

On 12.08.2008 at about 22.00 hours, the deceased Perumal was walking on the extreme left side of Cuddalore to Palur Main

Road, Keezh Arungunam, opposite to the house of one Renganathan, after attending to nature's call. At that time, the two wheeler (TVS Scooty Pep+) bearing Registration No. PY.01.AP.7130, belonging to the third respondent and insured with the appellant insurance company, which was proceeding from East to West direction on that road, came in a rash and negligent manner and at high speed and hit the deceased. Due to the said impact, the deceased Perumal sustained grievous injuries. He was admitted in the Government Hospital, Cuddalore for treatment and later he died on 20.08.2008 at about 11.00 a.m. Stating that the accident had occurred only due to the rash and negligent riding of the rider of the two wheeler, the respondents 1 and 2 /claimants, who are the daughter and son of the deceased, filed a claim petition, claiming compensation of Rs.10,00,000/-. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.1,70,000/-, with interest at 6% per annum from the date of petition. Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in fastening the liability on the appellant Insurance Company, when the fact remained that the insured vehicle was not at all involved in the accident and it has been falsely implicated for the purpose of claiming compensation. On the other hand, it is also submitted that the compensation awarded by the Tribunal is excessive.

4.Heard the learned counsel for the appellant / Insurance Company and perused the materials available on record. There is no representation for the first respondent. The appellant has not taken steps to serve notice on the other respondents. However, this Court is inclined to dispose of this appeal on merits.

5.With regard to the aspect of negligence, the Tribunal has analysed the matter in proper perspective and has observed that at the time of enquiry, the Investigating Officer/PW4 has wrongly mentioned the Registration Number of the vehicle as PY-01-AC-7130 instead of PY-01-AP-7130; insurance Policy also established that the Registration Number of the vehicle involved in the accident is PY-01-AP-7130; the make and model of the vehicle are one and the same, as per the charge sheet as well as the MVI Report; and the no objection expressed by the owner of the vehicle to hand over the same to the Police Station for Motor Vehicle Inspection also showed that the said vehicle was involved in the accident. In these circumstances, the Tribunal came to the conclusion that only the two-wheeler bearing Reg.No. PY.01.AP.7130 got involved in the accident and due to the fault

on the part of the rider of the two wheeler, the accident had occurred and hence, she was liable to pay compensation to the claimants. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

6.As regards the liability, the Tribunal has held that though the criminal case was registered against the rider of the two wheeler and one of the charges framed against her was non-possession of valid driving licence at the time of accident, she has valid insurance policy / Ex.P6 in respect of the offending vehicle and hence, the appellant insurance company on behalf of the third respondent / owner of the vehicle, is liable to pay compensation to the claimants at first instance and thereafter, recover the same from the owner of the vehicle, which does not call for any interference at the hands of this Court.

7.With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has relied upon the exhibits, evidence of witnesses, Legal Heirship Certificate, Post Mortem Certificate of the deceased, II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded Rs.1,60,000/- towards loss of dependency, Rs.5000/- towards loss of love and affection to the second claimant/son and Rs.5,000/- towards transport and funeral expenses, totally Rs.1,70,000/- along with interest at 6% p.a. This Court is of the considered view that the amounts so awarded are reasonable and justifiable and hence the same are hereby confirmed.

8.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant/ Insurance Company is directed to deposit the compensation amount as awarded by the Tribunal with interest and costs, after deducting the amount if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the third respondent / owner of the two wheeler. On such deposit being made, the respondents 1 and 2 / claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, on making proper application.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Principal District Judge,
Cuddalore.

Copy to :
The Section Officer,
VR Section,
High Court, Madras.

C.M.A.No.996 of 2017

RSV (CO)
RMP (05/05/2021)



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