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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.132 of 2021

and

C.M.P.No.863 of 2021

United India Insurance Company Ltd.
No.134, Greams road
Silingi buildings
Chennai-600 006.

...Appellant

Vs.

1.Krishnaveni
2.Ranjithkumar
3.Minor Soundarya
(Minor represented by their mother and
natural guardian, 1st respondent
Krishnaveni)
4.Muthulakshmi
5.Radharani

...Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.11.2019 made in M.C.O.P.No.6007 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.P.Sankaranarayanan

For R1 to R4 : Mr.T.G.Ravichandran

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 award dated 29.11.2019 made in M.C.O.P.No.6007 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

2.By consent of both the learned counsel appearing for the appellant/Insurance Company and the respondents 1 to 4, the



appeal is taken up for final disposal at the stage of admission itself.

3.The appellant is 2nd respondent/Insurance Company in M.C.O.P.No.6007 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judge, Small Causes Court, Chennai. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.34,00,000/- as compensation for the death of one Manikandan, who died in the accident that took place on 23.12.2017.

4.According to the respondents 1 to 4, on the date of accident i.e., on 23.12.2017 at about 15.30 hours, while the deceased Manikandan was riding in his two wheeler in Puliampatti, Coimbatore Main Road, near Ganapathy Sweets from South to North direction, the driver of the lorry belonging to the 5th respondent, who was coming in the opposite direction, drove the same in a rash and negligent manner, hit the two wheeler of the deceased and caused the accident. In the accident, the deceased sustained grievous injuries and died in the hospital on the same day. Therefore, the respondents 1 to 4 filed the above claim petition claiming compensation against the 5th respondent and the appellant/Insurance Company.

5.The 5th respondent, owner of the lorry, remained exparte before the Tribunal.

6.The appellant/Insurance Company insurer of the lorry filed counter statement denying the averments made in the claim petition and stated that the driver of the lorry belonging to the 5th respondent did not possess driving license to drive the vehicle. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 4. In any event, the compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent, wife of the deceased, examined herself as P.W.1, the 2nd respondent, son of the deceased examined himself as P.W.2 and one Mayilsamy, eye-witness to the accident, was examined as P.W.3 and 15 documents were marked as Exs.P1 to P15. The appellant/Insurance Company examined one Mr.B.Senthilvel, Assistant Manager of the Insurance Company, as R.W.1 and marked authorisation letter of Insurance Company as Ex.R1.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 5th respondent and directed the appellant/Insurance Company being insurer of the said lorry to pay a sum of Rs.16,37,000/- as compensation to the respondents 1 to 4.



9. Against the said award dated 29.11.2019 made in M.C.O.P.No.6007 of 2018, the appellant/Insurance Company has come out with the present appeal challenging the negligence fixed on the driver of the lorry and liability fastened on them.

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10. The learned counsel appearing for the appellant/Insurance Company contended that the accident has occurred only due to rash and negligent riding by the deceased and F.I.R. was registered only against the deceased based on the complaint given by the son of the deceased, the 2nd respondent herein. The accident has not occurred due to negligence of the driver of the lorry. The Tribunal failed to consider the F.I.R. and erroneously fixed negligence on the driver of the lorry. The Tribunal failed to note that the respondents 1 to 4 have not let in any official witness to establish the negligence on the driver of the lorry and prayed for setting aside the award of the Tribunal.

11. The learned counsel appearing for the respondents 1 to 4 made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials on record.

13. It is the case of the respondents 1 to 4 that on the date of accident, while the deceased Manikandan was riding the two wheeler, the driver of the lorry belonging to the 5th respondent, who was coming in the opposite direction, drove the same in a rash and negligent manner, dashed on the two wheeler driven by the deceased and caused the accident. Due to the injuries, the said Manikandan died. The respondents 1 to 4 have filed the claim petition claiming compensation for the death of the said Manikandan. In support of their case, the respondents 1 and 2 examined themselves as P.W.1 and P.W.2, examined one Mayilsamy, eye-witness to the accident as P.W.3, marked the F.I.R. as Ex.P1 and copy of complaint given to the Commissioner of Police, Coimbatore as Ex.P2. P.W.1 to P.W.3 deposed as mentioned in the claim petition. On the other hand, it is the case of the appellant/Insurance Company that the accident has occurred only due to negligence of the deceased. The 2nd respondent, who is son of the deceased gave complaint stating that while the deceased was overtaking the bus which was going in front of him, hit against the lorry, which was coming in the opposite direction. The appellant relied on the contents of F.I.R., which was registered based on the complaint given by the son of the deceased, the 2nd respondent herein. The 2nd respondent as P.W.2 deposed that he was not an eye-witness. He gave complaint based on the information received from one Suresh and subsequently, he came to know that the said Suresh was also



not an eye-witness and only P.W.3, the son of the said Suresh was an eye-witness. Immediately they gave complaint to the Commissioner of Police, Coimbatore, about the complaint and registration of F.I.R. against the deceased. The respondents 1 to 4 examined Mayilsamy, eye-witness as P.W.3, who deposed that the accident has occurred only due to rash and negligent driving by the driver of the lorry. The respondents 1 to 4 also relied on Ex.P2, complaint given to the Commissioner of Police, Coimbatore. The appellant except relying on the contents of F.I.R., has not examined the driver of the lorry or any eye-witness to substantiate their contention. They examined only their official witness as R.W.1, who is not an eye-witness. It is well settled that the contents of F.I.R. is not a substantive piece of evidence and it cannot be relied rather than evidence let in before the Tribunal on oath. In the present case, the Tribunal considering the evidence of P.W.3, eye-witness as well as evidence of P.W.1 and P.W.2 and the judgments relied on by the counsel for the respondents 1 to 4, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 5th respondent. There is no error in the finding of the Tribunal fixing negligence on the driver of the lorry warranting interference by this Court.

14. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.16,37,000/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount 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. On such deposit, the respondents 1, 2 and 4 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The share amount of the minor/3rd respondent is directed to be deposited in any one of the Nationalised Banks till the minor attains majority. The 1st respondent, being mother of the minor/3rd respondent, is permitted to withdraw the accrued interest once in three months for the welfare of the minor. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

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To

1.The Chief Judge,
Motor Accidents Claims Tribunal,
Small Causes Court, Chennai.

2.The Section Officer,
V.R. Section,
High Court, Chennai.

+1cc to M/s.T.G.Ravichandran, Advocate SR.No.5723

+1cc to M/s.P.Sankaranarayanan, Advocate SR.No.5178

C.M.A.No.132 of 2021
and
C.M.P.No.863 of 2021

SSV(CO)
RVM(02/09/2021)