



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A. No.1300 of 2011

AND M.P.No. 1 of 2011

The New India Assurance Co.Ltd,
No.46, Moore Street,
Parrys, Chennai-600001.

..Appellant/2nd Respondent

Vs.

1.Amsa
2.Venkatesan
3.Selvam
4.Mathy
5.P.Natarajan

..Respondents/Petitioners 1 to 4
..5th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.11.2010, made in M.C.O.P. No.664 of 2006, on the file of the III Judge, Court of Small Causes, Chennai.

For Appellant : M/s. C.Ramesh Babu

For Respondents: Mr. K.Varadhakamaraj -R1 to R4

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 25.11.2010, made in M.C.O.P. No.664 of 2006, on the file of the III Judge, Court of Small Causes, Chennai.

2.The appellant is the 2nd respondent in M.C.O.P. No.664 of 2006, on the file of the III Judge, Court of Small Causes, Chennai. The respondents 1 to 4 have filed the said claim petition, claiming a sum of Rs.20,00,000/- restricted to Rs.5,00,000/- as compensation for the death occurred in the road accident that took place on 11.03.2005.

3. According to the respondents 1 to 4/claimants, on 11.03.2005 at about 7.30 pm when the deceased was walking along East Coast Road with his son Venkatesan from Uthandi to



Kanathoor, at that time the first respondent's TVS Victor Motor Cycle bearing Regn.No.TN-07-AA-5860 came in a rash and negligent manner, hit the deceased, thereby deceased died on 11.03.2005 itself. The accident occurred due to the rash and negligent driving of the first respondent's Motor Cycle rider. Hence, the legal heirs of the deceased Ramanujam, the claimants/respondents 1 to 4 herein have filed a claim petition before the tribunal, claiming compensation against the owner of the vehicle and the Insurance Company for a sum of Rs.5,00,000/-

4.The appellant-Insurance Company, filed counter statement before the tribunal and denied the validity of insurance of the alleged vehicle on the date of accident and holding of valid driving licence by the rider of the vehicle. It is further stated in the counter statement that the alleged vehilce was not involved in the said accident. It is a fradulent attempt to substitute the vehicle to make a fraud claim. Age of the deceased and the income of the deceased claimed by the claimants was also denied by the Insurance Company.

5.Before the Tribunal, the 1st & 2nd respondents examined themselves as P.W.1 & PW2 and marked documents as ExP1 to P5. The appellant examined its official as R.W.1 and marked documents Exs R1 to R5.

6.The Tribunal after considering the pleadings, oral and documentary evidence, fixed liability on the rider of the two wheeler and awarded compensation of Rs.1,60,000/- under various heads together with interest at 7.5% per annum payable by the Insurance Company being the insurer of the vehicle.

7.Challenging the liability fastened on them by the award dated 25.11.2010, made in M.C.O.P. No.664 of 2006, the appellant - Insurance Company has come out with the present appeal.

8. The learned counsel for the appellant/Insurance Company submitted that the tribunal ought not to have relied upon the eyewitness PW2 to the accident, who is the second son of the deceased who deposed the involvement of the subject vehicle on the date of the accident. The tribunal was not justified in accepting the evidence of PW2 in the absence of any other public witnesses, who were present at the occurrence place. The learned counsel further submitted that the subject vehicle bearing Reg.No. TN07 AA 5860 not belonged to the 5th respondent as claimed by the respondents 1 to 4, but it is belonged to one K. Gopi, who is the owner of the Motor Cycle bearing Reg.No. TN09 T 3794 . The tribunal without examining the said K.Gopi to establish the involvement of the vehicle in the alleged road accient, rendered findings based on the Ex/P1-FIR and the evidence of PW2, which is unsustainable in law. The learned



counsel for the appellant also vehemently opposed the age of the deceased and the quantum of compensation determined by the tribunal adopting multiplier method.

9. On the other hand the learned counsel for the respondents 1 to 4/claimants submitted that though the appellant/insurance company denied the involvement of the two wheeler bearing Reg.No. TN07-AA-5860, they have not produced any documents or evidence to prove the same. The learned counsel for the respondents 1 to 4 has further submitted that the tribunal has fixed the age of the deceased based on the evidence of PW1 during cross examination at 70 years and rightly adopted the multiplier 5 as per the law laid down by the Hon'ble Supreme Court. Therefore, the compensation awarded by the tribunal at Rs.1,60,000/- by taking taking monthly income at Rs.3000/- per month and deducting $\frac{1}{4}$ towards personal expenses of the deceased is fair and reasonable and does not require any interference by this Court and the appeal is liable to be dismissed.

10. Heard learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondents and perused the materials available on record.

11. On considering the submissions and the materials available on record, it is seen that the main contention of the appellant is that the claimants have made a fraudulent attempt to substitute the vehicle to make a fraud claim, but the FIR Ex.P1 was registered against the 5th respondent's motor cycle bearing Reg.No. TN07-AA-5860. It is also seen from the records that though Ex.R2, the statement prepared by the investigation officer against the 5th respondent herein marked with objections, the insurance company/appellant herein had not taken any steps to examine the 5th respondent/rider of the two wheeler herein to establish the genuineness of Ex.R2. Further the appellant had also not taken any steps to examine the police officials to establish the defence. So the evidence of PW2 remains unchallenged before the tribunal which is supported by Ex.P2-Charge Sheet laid against the rider of the motor cycle bearing Reg.No.TN07-AA-5860/5th respondent herein. Considering all these aspects, the tribunal holds that the accident was due to rash and negligent riding of the rider of 5th respondent's motor cycle bearing Reg.No.TN07-AA-5860 and awarded compensation payable by the appellant, being insurer of the said vehicle. This Court finds no reason to interfere with the findings of the tribunal in respect of fixing liability on the part of the appellant/insurance company.

12. Insofar as quantum of compensation is concerned, though there are contra evidence placed before the tribunal in respect



of the age of the deceased, the tribunal has taken age of the deceased Ramanujam as 70 as per the evidence of PW1 during cross examination and rightly fixed the multiplier 5 as per law laid down by the Hon'ble Supreme Court and arrived compensation. Further, according to the claimants the deceased was labour and was earning Rs.200/- per day, but the tribunal has fixed the monthly income at Rs.3000/- per month, which is fair and reasonable and awarded compensation Rs.1,60,000/- together with interest at 7.5% per annum, which according to this Court is also reasonable and does not require any modification and the same is confirmed.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.1,60,000/- together with interest at the rate of 7.5% per annum is confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs as awarded by the tribunal, less the amount already deposited, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.664 of 2006. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw the award amount as apportioned 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.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge,
Kancheepuram.

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

+1 CC to Mr. Ramesh Babu, Advocate sr 282

+1 CC to Mr. Varadha Kamaraj, Advocate sr 240.

C.M.A. No.1300 of 2011
and M.P.No. 1 of 2011

MG(CO)
SP(01/09/2021)