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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.1175 of 2016
and
C.M.P.No.8873 of 2016

United India Insurance Company Limited,
Coimbatore. ...Appellant/2nd Respondent
Vs.

1.Selvam (died) ... 1stRespondent/1st Petitioner
2.Rukmani W/o. Selvam ... 2nd Respondent/2nd Petitioner
3.R.Velusamy ... 3rd Respondent/1st Respondent
4.Praveenkumar ... Respondent

(R4 brought on record as Legal Representative of the deceased R1 viz., Selvam vide Court order dated 20.02.2020 made in CMP.No. 12056 of 2019 in CMA.No.1175 of 2016)

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.11.2015 made in MCOP.No.1361 of 2010, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tiruppur.

For Appellant : Mr.I.Malar

For R1 : Died

For R2 & R4 : Mr.Ma.Pa.Thangavel

For R3 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company on the question of negligence and quantum.



2.The respondents 1 & 2 herein, who are the claim petitioners before the Motor Accidents Claims Tribunal, have filed a petition in MCOP.No.1361 of 2010, for claiming compensation for the death of their son, on the ground that while the two wheeler was driving by one Mohanasundaram, their son viz., Lokesh Kumar was travelled as a pillion rider and on the opposite direction, a two wheeler driven by one Mahesh Kumar, who has insured with the appellant herein/Insurance Company, has caused the accident.

3.The Appellant/Insurance Company has filed a counter statement disputing the manner of the accident, rash and negligent driving on the part of the driver of the offending vehicle, which was insured with them.

4.Before the Tribunal, on behalf of the claim petitioner, the father of the deceased was examined as PW1 and one occurrence witness was examined as PW2 and marked the documents viz., Exs.P1 to P4. On behalf of the respondent before the Tribunal, an Assistant from the Insurance Company was examined as RW1 and Inspector of Police was examined as RW2 and marked documents Ex.R1/Motor Vehicle Inspector's Inspection Report, Ex.R2/Charge Sheet & Ex.R3/Policy.

5.Upon consideration of both the oral and documentary evidence adduced on either side, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the offending vehicle namely Mahesh Kumar, who is insured with the appellant herein/Insurance Company and consequently, held that the Insurance Company is jointly and severally liable to pay the compensation to the claimants and hence, the present civil miscellaneous appeal.

6.Mrs.I.Malar, learned counsel for the appellant/Insurance company would contend that the negligence fixed on the part of the driver of the offending vehicle is erroneous and the quantum awarded by the Tribunal is on the higher side.

7.Mr.Ma.Pa.Thangavel, learned counsel for the claimant/2nd respondent, made his submissions in support of the award passed by the Tribunal.

8.On a perusal of the award passed by the Tribunal and also taking note of the evidence of PW2/occurrence witness, it appears that the Motor Accident Claims Tribunal has considered the evidence of PW2 and in the absence of any positive evidence to show that the accident has taken place due to the rash and negligent driving on the part of the rider of the two wheeler, in which the deceased has travelled as a pillion rider. On the



contrary, he also relied upon the evidence of PW2 to show that due to the rash and negligent driving of the said Mahesh Kumar, who was insured with the appellant herein, the accident had taken place.

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9. On a perusal of the documents, this Court finds that Ex.R2/Charge Sheet was filed against the rider of the two wheeler and the standard of the evidence that has to be considered by the Motor Accident Claims Tribunal has been settled as no longer res integra, in view of the positive evidence on the side of the claim petitioners and evidence of PW2/Doctor and in the absence of any positive evidence namely occurrence witness, the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving on the part of the driver of the offending vehicle viz., Mahesh Kumar and the third respondent herein is the owner of the vehicle, appellant herein is the Insurance Company and hence, this Court does not find any error in the award passed by the Tribunal on the point of negligence.

10. The learned counsel for the appellant/Insurance company draw my attention to the plea raised in the counter statement that since, three persons have travelled in a two wheeler bearing Registration No.TN 42 7095, in which the deceased has travelled, the accident had occurred. However, this Court finds that before the Tribunal, there is no evidence to that effect and even RW2/Srinivasan, Assistance from the RTO office, has not stated anything. Besides the Insurance Company, witness had not deposed that the accident has taken place due to the factum of three persons have travelled in a two wheeler bearing Registration No.TN 42 7095, in which, the deceased was one of them. In the absence of any evidence, this Court expressed its inability to uphold the contention raised by the learned counsel for the appellant/Insurance Company. Furthermore, even the evidence of RW2/Srinivasan has not deposed anything regarding possession of driving license of the vehicle in which, the deceased has travelled and hence, for want of evidence adduced before the Trial Court, this Court is unable to uphold the contention raised by the learned counsel for the appellant-Insurance Company.

11. In this view of the matter, this Civil Miscellaneous Appeal stands dismissed and the appellant-Insurance Company is directed to deposit the balance of compensation amount awarded by the Tribunal, within a period of twelve weeks from the date of receipt of a copy of this judgment.

12. The learned counsel for the respondents 2 & 4/claimant would submit that during the pendency of the appeal, the father of the deceased died and his brother has brought on record as



legal representative. Out of the quantum of compensation awarded by the Tribunal, in respect of the share of the mother of the deceased, she is permitted to take 70% while the brother of the deceased shall permitted to take 30%. No costs. Consequently connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal
(Chief Judicial Magistrate) at Tiruppur.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 9588.

CMA.No.1175 of 2016
and C.M.P.No.8873 of 2016

SRA (CO)
SP(06/09/2021)