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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.295 OF 2021

AND

C.M.P.NO.2021 OF 2021

The Branch Manager,
Reliance General Insurance Company Limited,
19, Reliance Center, Wakhand Hirachand Marg,
Ballard Estate, Mumbai.

Branch office at II Floor,
Sri Abirami Towers,
433, Holy Brown Road, R.S.Puram,
Coimbatore.

.. Appellant/
III Respondent

Vs.

1.M.Subramaniam

2.Palaniyammal

... 1 & 2 Respondent /
1 & 2 Petitioner

3.Sathiyaseelan

4.M/s. Bharath Motors,
51/2, Palakkad Road,
Pollachi.

.. 3 & 4 Respondents/
1 & 2 Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 05.03.2020 made in M.C.O.P.No.50 of 2018 on the file of the Motor Accidents Claims Tribunal, Sub Court, Udumalpet.

For Appellant : Ms.C.Bhuvanasundari

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the award dated 05.03.2020 made in M.C.O.P.No.50 of 2018 on the file of the Motor Accidents Claims Tribunal, Sub Court, Udumalpet.



2.The appellant is the 3rd respondent in M.C.O.P.No.50 of 2018 on the file of the Motor Accidents Claims Tribunal, Sub Court, Udumalpet. The respondents 1 and 2 filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation for the death of their son viz., Vigneshwaran, who died in the accident that took place on 24.10.2017.

3.According to respondents 1 and 2, on 24.10.2017 at about 02.20 P.M., while the deceased Vigneshwaran was travelling as pillion rider in the motorcycle bearing Registration No.TN 41 AR 4071 ridden by the 3rd respondent from East to West direction on Udumalpet - Palani road towards Udumalpet bus stand, the cyclist who was proceeding in front of the motorcycle in which the deceased was travelling as pillion rider, suddenly turned to his right side. On seeing this, the 3rd respondent applied sudden brake. Due to the said impact, the said Vigneshwaran and the 3rd respondent fell down from the motorcycle and the said Vigneshwaran sustained severe injuries in his head. Immediately after the accident, the said Vigneshwaran was taken to Gokul Poly Clinic, Udumalpet for first aid treatment. Thereafter, he was taken to KMCH Hospital, Coimbatore for further treatment. The duty Doctor from KMCH Hospital examined the said Vigneshwaran and confirmed that the said Vigneshwaran was brought dead. Therefore the respondents 1 and 2, being the parents of the deceased filed the above said claim petition claiming a sum of Rs.25,00,000/- as compensation against the respondents 3, 4 and appellant-Insurance Company, being the rider, owner and insurer of the motorcycle.

4.The respondents 3 and 4, being the rider and owner of the motorcycle respectively remained exparte before the Tribunal.

5.The appellant-Insurance Company, being the insurer of the motorcycle filed counter statment and denied all the averments made by the respondents 1 and 2. The appellant denied the manner of accident. The 3rd respondent-rider of the motorcycle was not possessing valid driving license at the time of accident and violated the policy conditions. Hence, the appellant is not liable to pay any compensation to the respondents 1 and 2. The said Vigneshwaran was not wearing helmet at the time of accident. The respondents 1 and 2 have to prove that the accident has occurred only due to rash and negligent riding by the 3rd respondent. The appellant denied the age, avocation and income of the deceased. In any event, the quantum of compensation claimed by the respondents 1 and 2 is highly excessive and prayed for dismissal of the claim petition.



6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and one Arunpranesh was examined as P.W.2 and 16 documents were marked as Exs.P1 to P16. The appellant-Insurance Company did not let in any oral and documentary evidence.

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7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to 4th respondent and directed the respondents 3, 4 and appellant to jointly and severally pay a sum of Rs.14,58,000/- as compensation to the respondents 1 and 2.

8. To set aside the said award dated 05.03.2020 made in M.C.O.P.No.50 of 2018, the appellant-Insurance Company has come out with the present appeal.

9. Though the appellant-Insurance Company has raised various grounds in the grounds of appeal, at the time of arguments, the learned counsel appearing for the appellant-Insurance Company restricted her arguments and contended that additional premium was not paid by the 4th respondent-employer of the deceased under IMT 29 for the deceased and hence, the Tribunal ought to have exonerated the appellant-Insurance Company from its liability and prayed for setting aside the award passed by the Tribunal.

10. Heard the learned counsel appearing for the appellant and perused the entire materials on record.

11. From the materials available on record, it is seen that the appellant-Insurance Company has not raised any ground in the counter statement before the Tribunal that no additional premium was paid by the 4th respondent-employee of the deceased under IMT 29 for the deceased and also the appellant has not let in any evidence to prove that no additional premium was paid by the 4th respondent. Without any pleadings in the claim petition or in the counter statement, the appellant-Insurance Company now cannot raise a new ground before this Court.

12. For the above reason, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.14,58,000/- awarded by the Tribunal as compensation to the respondents 1 and 2, along with interest and costs is confirmed. The respondents 3, 4 and appellant-Insurance Company are jointly and severally directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of



receipt of a copy of this judgment to the credit of M.C.O.P.No.50 of 2018 on the file of the Motor Accidents Claims Tribunal, Sub Court, Udumalpet. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Udumalpet.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.295 of 2021

CA(CO)
PM/15/09/2021