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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. Nos.2259 and 2260 of 2015
and
CMP Nos.15343 and 15344 of 2017
MP Nos.1 and 1 of 2015

United India Insurance Co. Ltd.
Branch Office,
Mettupalayam Post,
Coimbatore District.

.... Appellant in
both CMAs/Respondent II

versus

Venkatachalam (Died)
1. Easwari

... Respondent
... 1st respondent in
CMA No.2259 of 2015/Claimant

1. Marappan
2. Saroja

... 1st respondent }
.... 2nd respondent }in
CMA No.2260 of 2015/Claimants

3. Nagaraj

... 2nd respondent in
CMA No.2259 of 2015
3rd respondent
in CMA No.2260 of 2015/Respondent

Prayer in CMA No.2259 of 2015 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 07.03.2015 made in MCOP No.430 of 2009 on the file of the MACT (Spl. District Court) at Salem.

Prayer in CMA No.2260 of 2015 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 07.03.2015 made in MCOP No.466 of 2009 on the file of the MACT (Spl. District Court) at Salem.



For Appellant in both CMAs: Ms.I.Malar

CMA No.2259 of 2015

For R1 : Mr.V.Chandramohan
For R2 : Not ready in notice

CMA No.2260 of 2015

For R1 & R2 : Mr.V.Chandramohan
For R3 : Not ready in notice

COMMON JUDGMENT

These appeals have been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal (Special District Court), Salem, dated 07.03.2015 in MCOP Nos.430 of 2009 and 466 of 2009.

2. The Legal Representatives of the rider viz., Vijaya Sridhar and pillion rider viz., Loganathan of the Hero Honda Splendor motor cycle bearing Registration No.TN30-S-7769, who died as a result of an accident caused by a vehicle insured with the appellant / Insurance Company have filed the separate MCOPs viz., Nos.430 and 466 of 2009 seeking compensation of Rs.12,00,000/- each.

3. The Tribunal under the impugned award has directed the appellant / Insurance Company to pay the claimant in MCOP No.430 of 2009 a compensation of Rs.5,11,400/- and the claimants in MCOP No.466 of 2009, a compensation of Rs.4,09,000/-

4. Heard Ms.I.Malar, learned counsel for the appellant in both appeals and Mr.V.Chandramohan, learned counsel for the respondents / claimants in both appeals. Since, this Court is going to confirm the award of the Tribunal, service of notice to the 2nd respondent in CMA No.2259 of 2015 and 3rd respondent in CMA No.2260 of 2015, who is the owner of the insured vehicle is not necessary.

5. This Court has perused and examined the impugned award.

6. The only ground raised by the appellant / Insurance Company in these appeals is that the Tribunal has committed an error by awarding compensation to the claimants in the absence of documentary evidence to show that the accident had occurred due to the negligent driving by the driver of the insured lorry. According to them, even though the FIR has been registered only against the rider of the motor cycle (deceased Vijaya Sridhar), the Tribunal has erroneously directed the appellant to pay the compensation. The appellant / Insurance Company has not questioned the quantum of compensation awarded by the Tribunal, but they are aggrieved only by the finding of the Tribunal holding them liable to pay the compensation.



7. The contention of the respondents / claimants before the Tribunal, as seen from their respective claim petitions is that only due to the rash and negligent driving by the driver of the insured lorry, the accident had happened, which resulted in the death of the rider and the pillion rider of the motor cycle. According to the claimants, when the motor cycle was going on MGR road bridge, the insured lorry bearing Registration No.TN-40- 7749, which came behind the motor cycle at a very high speed tried to overtake the motor cycle and on seeing another lorry coming from the opposite direction, the insured lorry suddenly turned towards left in a rash and negligent manner and dashed against the motor cycle. As a result, the rear and left side of the lorry dashed on the motor cycle and both persons who travelled in the motor cycle sustained head injuries and multiple fractures all over their body, which resulted in their death. According to the claimants, there is no negligence on the part of the motor cycle in the accident. The Tribunal has rightly rejected the FIR which was marked as Ex.P1, based on the complaint given by the Driver of the insured lorry, since, the Driver of the insured lorry was not examined as a witness before the Tribunal. The Tribunal has also rightly rejected the contention of the appellant / Insurance Company, since they have not examined any person as a witness, who has actually witnessed the accident. The claimants through their oral evidence have taken a consistent stand that only due to the rash and negligent driving by the driver of the insured lorry, the accident has happened. Therefore, this Court is of the considered view that the contention raised by the appellant in these appeals, does not deserve any merit. Accordingly, both these Civil Miscellaneous Appeals shall stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

8. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of respective M.C.O.P. Nos.430 and 466 of 2009 on the file of the Motor Accidents Claims Tribunal, (Special District Court), Salem, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the respective respondent (s) / claimant through RTGS, within a period of two weeks thereafter, as per the ratio of apportionment fixed by the Tribunal.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar



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To:

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1. The Motor Accident Claims Tribunal,
The Special District Court,
Salem.

2. The Section Officer,
V.R. section,
High Court, Madras - 104.

+2ccs to Mr.P.Jagadeesan, Advocate SR.No.22586, 22587

+1cc to Mr.T.Ravichandran, Advocate SR.No.22559

C.M.A. Nos.2259 and 2260 of 2015

SR -II (CO)
GMY(08/09/2021)