WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.3100 OF 2011
AND
M.P NO.1 OF 2011

New India Assurance Co. Ltd.,
No.45, Moore Street
Chennai.-01. ...Appellant / 2nd Respondent

Vs.

1.Saroja Sahadevan
2.Girija Rukmani
3.P.S.Surendran
4.P.S.Kumarasamy ...Respondents / Petitioners
5.V.C.Adinarayanan ...Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.09.2010 passed in M.C.O.P.No.2855 of 2004 by the Motor Accident Claims Tribunal, (Chief Judge, Small Causes Court), Chennai.

For Appellant : Mr.K.Vinod

For Respondents : Mr.S.Natarajan for R1 to R4
Notice unserved to R5

J U D G M E N T

Dissatisfied with the judgment and decree, dated 30.09.2010, passed by the tribunal awarding compensation of Rs.2,15,000/- along with interest at the rate of 7.5% per annum,

https://hcservices.ecourts.gov.in/hcservices/

the Appellant/ Insurance Company is before this Court to set aside the judgment and decree by the tribunal.

2. It is the case of the claimants/respondents 1 to 4 herein that on 29.10.2003 at 5.45 a.m, the deceased Sahadevan was crossing Gandhi Mandapam Salai in East to West direction and has almost gone to the other end of the road. At that time, the first respondent's driver, drove the vehicle viz., Maruthi Omni Vehicle bearing Registration No.TN-02-L-9676 in a rash and negligent manner along Gandhi Mandapam Salai in north to south direction, crossed the yellow line, came to the extreme right side of the road and hit against the deceased and thereby he sustained fatal injuries and died on the same day. Hence, a claim petition has been filed against the respondents seeking a sum of Rs.3,00,000/- as compensation.

3. The tribunal after analyzing both oral and documentary evidences, has fixed the negligence on the driver of the 1st respondent insured with the 2nd respondent/insurance company and directed them to pay a sum of Rs.2,15,000/- as compensation along with interest at the rate of 7.5% p.a from the date of petition till realization. The compensation awarded by the tribunal under various heads are as follows;

Heads	Amount in Rs.
Loss of Income	1,89,000 (27,000 x 7)
Loss of consortium	10,000
Loss of Love and Affection	10,000
Funeral Expenses	6000
Total	2,15,000/-

4. Before the Tribunal, two witnesses were examined as P.W.1 & P.W.2 and Exhibits P1 to P4 were marked on the side of the claimants/respondents 1 to 4 herein. No oral or documentary evidence was adduced on the side of the 2nd respondent/appellant herein.

5. It is contended by the appellant/ insurance company that they have filed a counter affidavit before the Tribunal resisting the claim petition and denied the said accident and

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the involvement of the vehicle in the said accident. The Tribunal has considered the defence taken by the second respondent and observed that the appellant/insurance company has not examined any witness nor marked any document to prove that the offending vehicle was not involved in the said accident and affirming that the said accident was occurred due to the negligence on the part of the driver of the first respondent vehicle. The main ground raised by the appellant/insurance company is that in the FIR which was marked as Ex.P1, it was mentioned as unknown vehicle and subsequently, there is no evidence placed by the respondents 1 to 4/claimants to prove that the offending/insured vehicle was involved in the said accident. Therefore, according to the learned counsel for the appellant/insurance company, the said claim made by the respondents 1 to 4/claimants is not genuine and seeks to set aside the award passed by the Tribunal.

6. The learned counsel for the respondents 1 to 4 would submit that the claimants have satisfied the Tribunal by marking the document Ex.P2 which itself speaks about the investigation on the complaint and the involvement of the insured vehicle in the said accident and no material has been placed by the appellant to disprove the claim of involvement of the insured vehicle in the accident. Therefore, the Tribunal has rightly came to a conclusion that the accident was happened due to the negligence on the part of the driver of the first respondent vehicle.

7. On considering the aforesaid issues, the point involved in the present appeal is that whether the offending/insured vehicle is not involved in the accident.

8. A perusal of Ex.P1, viz., copy of FIR and the observation made by the Tribunal, it reveals that the 1st claimant, who is the wife of the deceased had lodged a complaint and in the complaint, she stated that an unknown vehicle was involved in the said accident. Based on the complaint, the police has investigated the case and filed a charge sheet and the same was marked as Ex.P2 before the Tribunal. In the said charge sheet, the vehicle number was specifically mentioned by the Inspector of Police. There is no other contra evidence or materials on the side of the appellant/insurance company to disprove the claim of involvement of the offending/insured

https://hcservices.ecourts.gov.in/hcservices/

vehicle in the said accident. If the said claim made by the respondents 1 to 4/claimants is not genuine, the insurance company ought to have taken all efforts to approach the authority concerned to disprove the claim made by the claimants. As seen from the records, no such effort was taken by the appellant/insurance company to disprove the claim of the involvement of the vehicle in the said accident as alleged by the claimants. Therefore, the contention of the appellant cannot be accepted and this Court affirms the findings given by the Tribunal. It is not disputed by the appellant insurance company against the quantum awarded by the Tribunal. In view of the aforesaid discussions, there is no merits in the instant appeal and consequently, this appeal is liable to be dismissed.

9. In the result, this Civil Miscellaneous Appeal preferred by the appellant/insurance company is dismissed and the compensation awarded by the Tribunal at Rs.2,15,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The appellant/insurance company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 4/claimants are permitted to withdraw the award amount along with interest fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

uma

To

1.The Motor Accident Claims Tribunal,
(Chief Court. Small Causes Court),
Chennai.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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

+1cc to Mr.S.Natanarajan, Advocate SR.No.21799

+1cc to Mr.K.Vinod, Advocate SR.No.21663

CMA.No.3100 of 2011
and M.P No.1 of 2011

MG(CO)
RVM(16/09/2021)

https://hcservices.ecourts.gov.in/hcservices/