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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1385 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
The Oriental Insurance Company Limited,
City Branch Office, No.1, Siva Complex, 2nd Floor,
No.22-C, Sarada College Main Road,
Salem - 636 016. .. Appellant/2nd Respondent

Vs.

1.Kalaiselvi

2.Minor. Ragul

3.Minor. Harish

(Minor respondents 2 & 3 represented
by their Mother & next friend,
Kalaiselvi, 1st respondent herein)

4.Mookkiammal ... 1 to 4 Respondents/Petitioners

5.C.Sambath ... 5th Respondent/1st Respondent

(R5 remained exparte before Tribunal.

Hence, notice to R5 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.08.2012 made in M.C.O.P.No.458 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Harur.

For Appellant : Mr.M.Krishnamoorthy
For RR 1 to 4 : Mr.M.Selvam
For R5 : Exparte

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid mode".)

This Civil Miscellaneous Appeal has been filed against the award dated 03.08.2012 made in M.C.O.P.No.458 of 2009 on the



file of the Motor Accidents Claims Tribunal, Sub Court, Harur.

2.The appellant is the 2nd respondent in M.C.O.P.No.458 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Harur. The respondents 1 to 4 filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Natarajan, who died in the accident that took place on 30.12.2008.

3.According to respondents 1 to 4, on 30.12.2008, the deceased Natarajan was riding the motorcycle bearing Registration No.TN 29 AY 2372 along with pillion rider slowly on the left side of the Uthangarai - Harur main road towards Harur. At about 08.30 P.M., while the deceased Natarajan was proceeding near Sengampatti Mettu Kottai diversion road, the lorry bearing Registration No.TN 28 7877 belonging to 5th respondent and insured with appellant was parked on the middle of the road without any parking signal. The deceased, who was riding the motorcycle has not anticipated that a lorry was parked on the middle of the road that too without any signal or red danger light or stopping signal, unfortunately dashed behind the lorry. In the said accident, Natarajan sustained fatal injuries and died on the spot. Therefore, the respondents 1 to 4, filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation against the 5th respondent and appellant-Insurance Company, being the owner and insurer of the lorry respectively.

4.The 5th respondent - owner of the lorry remained exparte before the Tribunal.

5.The appellant-Insurance Company, being the insurer of the lorry belonging to 5th respondent filed counter statement and denied all the averments made by the respondents 1 to 4. The appellant denied the manner of accident as alleged by the respondents 1 to 4. The pillion rider of the motorcycle has given a complaint to the Police that the rider of the motorcycle only drove the motorcycle in a rash and negligent manner and dashed behind the lorry, which was parked in the extreme left side of the road. Therefore, there is no negligence on the part of the driver of the lorry and hence, the appellant is not liable to pay any compensation to the respondents 1 to 4. The appellant denied the age, avocation and income of the deceased. The appellant further contended that at the time of accident, both the deceased / rider of the motorcycle as well the driver of the lorry were not possessing valid driving license. In any event, the quantum of compensation claimed by the respondents 1 to 4 are highly excessive and prayed for dismissal of the claim petition.



6. Before the Tribunal, the 1st respondent examined herself as P.W.1, one A.Sambath was examined as P.W.2 and one Vasu, pillion rider of the motorcycle was examined as P.W.3 and six documents were marked as Exs.P1 to P6. The appellant-Insurance Company examined the Sub-Inspector of Police as R.W.1 and one M.Duraisamy as R.W.2 and two documents were marked as Exs.R1 & R2.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to negligence on the part of the driver of the lorry belonging to 5th respondent and directed the appellant-Insurance Company, being the insurer of the 5th respondent's lorry to pay a sum of Rs.6,15,000/- as compensation to the respondents 1 to 4.

8. Against the said award dated 03.08.2012 made in M.C.O.P.No.458 of 2009, the appellant-Insurance Company has come out with the present appeal.

9. The learned counsel appearing for the appellant contended that Tribunal erred in accepting and relying on the evidence of P.W.3 and failed to consider the fact that F.I.R. was registered only based on the complaint given by P.W.3. P.W.3 has deposed in contradiction to the contentions of F.I.R. According to P.W.3, the accident has occurred only due to rash and negligent riding by the deceased. The respondents 1 to 4 cannot rely on the portion of the F.I.R. and Tribunal cannot permit the respondents 1 to 4 to deny the other portion of the F.I.R. The driver of the lorry has parked the lorry on the extreme left side of the road. The accident occurred only due to rash and negligent riding by the deceased, who dashed on the parked lorry. The driver of the lorry was not responsible for the accident. The Police after investigation, closed the F.I.R. as charges abated. The Tribunal failed to consider the evidence of R.W.1 & R.W.2 as well as the documents filed by the appellant and prayed for setting aside the award passed by the Tribunal.

10. The learned counsel appearing for the respondents 1 to 4 made his submissions in support of the award passed by the Tribunal and prayed for dismissal of appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 4 and perused the entire materials on record.

12. From the materials available on record, it is seen that it is the case of the respondents 1 to 4 that lorry



belonging to 5th respondent and insured with appellant was parked in the middle of the road without any signal or parking light. In view of the same, the deceased, who was riding the motorcycle dashed the motorcycle on the backside of the lorry, sustained fatal injuries and died. To prove their case, the respondents 1 to 4 examined the pillion rider as P.W.3. P.W.3 has deposed as that of the averments in the claim petition. P.W.3 in the cross examination has deposed that Police obtained his signature only in blank papers and deposed that the lorry was parked only in the middle of the road and accident occurred due to negligent parking by the driver of the lorry. On the other hand, it is the case of the appellant-Insurance Company that accident occurred only due to rash and negligent riding by the deceased, who dashed on the backside of the lorry, which was parked on the left hand side of the road. To substantiate this contention, the appellant relied on Ex.P1/F.I.R. According to learned counsel appearing for the appellant, the F.I.R. was registered based on the statement of P.W.3, who was a pillion rider and respondents 1 to 4 having marked F.I.R. cannot rely only on one portion of the F.I.R. and deny the other portion of the F.I.R. with regard to the manner in which the accident occurred. This contention of the learned counsel appearing for the appellant is without merits.

13.The pillion rider who is an eyewitness to the accident was examined as P.W.3, who deposed that accident has occurred only due to the negligent parking by the driver of the lorry in the middle of the road without any signal or parking light. Further, he has deposed that in the Hospital, the Police took his signature in blank papers. To disprove the statement given by P.W.3 on oath, the appellant did not examine the Police Officer, who investigated the case, who visited the place of occurrence and prepared the rough sketch. The appellant examined one Ganesh Kumar, Sub-Inspector of Police as R.W.1, who clearly deposed that he does not know about the accident personally. He further deposed that in the rough sketch, there is no mention about any damage to the backside of the lorry. The evidence of R.W.1 in such circumstances does not substantiate the case of the appellant. The appellant has not examined any eyewitness or driver of the lorry to prove their case. The Tribunal considering the evidence of P.W.3 given on oath, has accepted the same rather than relying on the contents of F.I.R. and held that accident has occurred only due to rash and negligent parking by the driver of the lorry belonging to 5th respondent. There is no reason to interfere with the award passed by the Tribunal warranting interference by this Court.



14. For the above reason, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.6,15,000/- awarded by the Tribunal as compensation to the respondents 1 to 4, along with interest and costs is confirmed. The appellant-Insurance Company is 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.458 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Harur. On such deposit, the respondents 1 and 4 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. The share of the minor respondents 2 & 3 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 & 3 attain majority. On such deposit, the 1st respondent, being the Mother of the minor respondents 2 & 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 & 3. 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,
Harur.

2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.M.Selvam, Advocate SR.No.63192

C.M.A.No.1385 of 2014

CP(CO)
GN(06/01/2022)