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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.1665 of 2020
and C.M.P.No.12269 of 2020

Cholamandalam MS General Insurance Co. Ltd.,
"Dare House",
2nd Floor, No.2, N.S.C. Bose Road,
Chennai 600 001. .. 2nd Respondent/Appellant

Vs.

- 1.Jayashankar
- 2.Minor Vishnupriya
(represented by her father, Jayashankar)
- 3.Parasuraman
- 4.Pazaniammal
- 5.Abdul Khader Shaik
.. Claimants 1to4/ First Respondent/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.11.2019, made in M.C.O.P. No.996 of 2018, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mrs.R. Sreevidhya

For Respondents : Mr.S.Viswanathan (For R1 to R4)
for M/s. Dass & Viswa Associates

No appearance (For R5)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 28.11.2019, made in M.C.O.P. No.996 of 2018, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.



2.The appellant is the 2nd respondent in M.C.O.P. No.996 of 2018, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri. The respondents 1 to 4/claimants filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Muneeswari who died in the accident that took place on 27.12.2017.

3.According to the respondents 1 to 4, on the date of accident, the deceased was sitting near Indira Gandhi Statue at Kattinayanapalli junction bus stop along with one Rami, waiting for the arrival of Bus. At that time, an Eicher Lorry bearing Registration No.AP-03-TE-3927 belonging to the 5th respondent, driven by its driver in a rash and negligent manner, dashed on the backside of the Two wheeler rode by a girl viz., Sonia who was proceeding in Kuppam to Krishnagiri road and then suddenly turned the Lorry towards right side and dashed on the said Muneeswari and Rami, who were sitting at the Bus stop and caused the accident. In the accident, the said Muneeswari sustained severe injuries and died. The accident occurred only due to rash and negligent driving by the driver of the Lorry belonging to the 5th respondent. Hence, the respondents 1 to 4 filed the claim petition claiming compensation against the 5th respondent as owner and appellant as insurer of the said vehicle.

4.The 5th respondent, owner of the Lorry, remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the respondents 1 to 4 in the claim petition. According to the appellant, the accident occurred when the deceased suddenly crossed the road. Hence, the appellant is not liable to pay compensation to the respondents 1 to 4. In any event, the respondents 1 to 4 have to prove that the driver of the Lorry possessed valid driving license to ply the vehicle and the vehicle was insured with the appellant, at the time of accident. The respondents 1 to 4 also have to prove the age, avocation and income of the deceased to claim compensation. The total compensation claimed by the respondents 1 to 4 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined 3 eye witnesses as P.W.2 to P.W.4 and marked 19 documents as Exs.P1 to P19. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Lorry belonging to the 5th respondent and directed the appellant as well as the



8.Questioning the quantum of compensation granted by the Tribunal in the award dated 28.11.2019, made in M.C.O.P. No.996 of 2018, the appellant - Insurance Company has come out with the present appeal.

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 the appeal.

12. Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 4 and perused the materials available on record.

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appellants have not produced any materials to show that the respondents 3 and 4 are not dependants on the deceased. The Tribunal considering the entire materials on record, held that the respondents 1 to 4 are dependants of the deceased and granted compensation by deducting 1/4th towards personal expenses. There is no error in the award of the Tribunal warranting interference by this Court.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.27,91,600/- 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 as well as the 5th respondent are jointly and severally directed to deposit the 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, to the credit of M.C.O.P. No.996 of 2018. On such deposit, the respondents 1, 3 and 4 are permitted to withdraw their share of the award amount, determined by the Tribunal, along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor 2nd respondent is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st respondent, father of the minor 2nd respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 2nd respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

2. The Section Officer,
V.R Section,
High Court, Madras.



+1cc to M/s.Dass & Viswa Associates, Advocates Sr No.6122

+1cc to M/s.R.Sreevidhya, Advocate Sr No.6857

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AKI (CO)
PR (07/09/2021)