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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4443 of 2019

and

CMP.Nos.25183 of 2019 and 6522 of 2020

(Through Video Conferencing)

M/s.HDFC ERGO General Insurance
Company Limited,
New No.528, Old No.559, 2nd Street,
Anna Salai, Teynampet,
Chennai 600 018.

... Appellant/Respondent

Vs.

1. Geetha
2. Govindammal
3. Govindasamy (minor)
4. Silambarasan (minor)
5. Anandan (minor)
(minor petitioners represented by
their Next friend/step mother and
mother/1st petitioner Geetha)

6. Perumal
 7. Kamalanathan
-Respondents/Petitioners
... Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and Judgment dated 19.03.2019 made in MCOP.No.639 of 2015, on the file of the Motor Accidents Claims Tribunal, (Special District Judge) Dharmapuri.

For Appellant : Mr.K.Vinod

For Respondents:

For R1 to R5 : C.E.Pratap

For R6 : Died

For R7 : No Appearance

JUDGMENT

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned judgement and decree dated 19.03.2019 passed by the Motor Accidents Claims Tribunal (Special District Judge) Dharmapuri in MCOP.No.639 of 2015.



2. By the impugned order, the Tribunal has awarded a sum of Rs.15,22,000/- as compensation payable by the appellant Insurance Company to the respondents/claimants on the following heads:

Compensation for Pecuniary Loss	Rs.14,17,500/-
Loss of Consortium	Rs. 40,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Medical Bills	Rs. 34,500/-
Total	Rs.15,22,000/-

3. The appellant/insurance company has challenged the impugned judgment and decree passed by the Tribunal on three grounds namely liability, negligence and quantum of compensation.

4. Heard learned counsel for the appellant and the learned counsel for the respondent.

5. The learned counsel for the appellant/insurance company has submitted that the liability cannot be fastened on the appellant/insurance company. He further submitted that there is no insurance policy for tanker. It is submitted that as per Ex.R.2 Copy of Insurance Policy, the policy has been given only for the tractor alone and the unregistered tanker was not insured with this appellant/insurance company.

6. However, this Court in Branch Manager, United India Insurance Company Limited Vs. Tamlarasi and another (CMA.No.898/2017, dated 14.09.2018) has held as under.

" In the case referred above, a tractor attached with a trailer was parked in the middle of the road without switching on the parking light and the deceased who was riding TVS 50 Moped dashed behind the tractor and met with an accident. The insurance company took a defence that the trailer was not insured and the trailer should be used only for agriculture or forestry purpose and not for commercial purpose. They further contended that as the trailer was not insured with them at the relevant time, insurance company is not liable to pay compensation. The Honourable Madras High Court has ruled that the trailer cannot independently move and it has to be pulled by a tractor. Further it was observed that for putting the tractor to effective use, the trailer is



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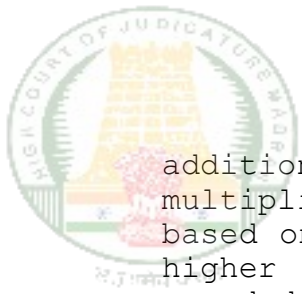
required and that tractor and trailer being interconnected to each other, insurance company cannot avoid their liability on the ground that the trailer was not insured, more particularly when the tractor was insured effectively with the insurance company. Therefore, the observation in the above judgment is squarely applicable to the case on hand.

Thus the liability can be fastened on the appellant/insurance company.

7. That apart, the appellant/ insurance company cannot disown the liability as it had insured the tractor. The definition of tractor under Section 2(44) it is a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion), but, excludes a road roller.. Thus, it is only designed to mechanically propel engines and is intended to be attached with trailers/tankers. Therefore, the contention of the appellant/insurance company that no liability can be fastened is to be rejected.

8. As far as negligence is concerned, there is no eyewitness for the accident. A complaint was lodged by the deceased father, based on which, FIR was registered. The deposition of RW4 who is the driver of the insured tractor reveals that one of the tyre of the tractor was punctured and therefore, he left the tractor with the tanker on the road and had placed a stone on its side for identification and left his father in the spot. No statement has been recorded from the owner of the vehicle/ the father of the driver Mani (RW4). Therefore, since no eye witness has been examined by the appellant to prove that the accident occurred only due to the rash and negligent act of the deceased, defence of the appellant alleged has to fail. That apart, the accident occurred at 7.30 p.m. The tanker lorry was attached to the tractor. It did not have any danger signal available to caution the vehicle coming from behind. Therefore, it can be assumed that the rider of the motorcycle/deceased sustained injuries and died due to the negligence of the driver of the tractor. The deposition of RW4 that he had put stones to warn the vehicles from behind would have hardly warned a driver/rider of vehicle coming from behind during dusk hours when there is poor visibility. Hence, the liability can be fastened on the appellant/insurance company.

9. Though the appellant insurance company has made out a case for interference as far as the computation of compensation is concerned, it is to be noted that the accident is of the year 2015. The monthly income of the deceased has been taken as to be Rs.7500/- . This according to me is very low. Perhaps the Tribunal would have determined the above compensation based on a slightly higher notional income. There is an error, as far as



additional 40% were future prospect and the adoption of 15 multiplier, the age of the deceased is considered as 40 years based on the post-mortem report in Ex.P2. However, if a slightly higher notional income was considered, the compensation to be awarded to the claimants would have been much higher than the amount that has been awarded to the claimants would have been much higher than the amount that has been awarded by the Tribunal, even if it is considered that the Tribunal had wrongly adopted 15 multiplier and added 40% towards future prospect of the income of the deceased.

10. This court is ultimately concerned with awarding of just compensation as has been held by the Hon'ble Supreme Court. Even otherwise, the age of the deceased in Exhibit P2 Post mortem report cannot be taken to be the conclusive age of the deceased in the absence of report of the radiologist. Therefore, even though there are few apparent mistakes in the computation of compensation. They are to be ignored as the tribunal has considered a very low notional income of Rs.7500/- for an accident which took place in the year 2015.

11. Therefore, I am of the view, the compensation awarded by the tribunal is to be confirmed notwithstanding few minor mistakes in the computation of compensation as higher notional income would have resulted in payment of higher compensation to the respondent/claimants. Since there is no appeal from the claimants for enhancement of compensation, I therefore confirm the compensation awarded by the Tribunal in the impugned judgment and decree. Hence, the appeal filed by the appellant insurance company is liable to be dismissed.

12. The appellant/Insurance Company is therefore directed to deposit the amount of compensation awarded by the tribunal after deducting amount already deposited by it together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited within a period of six weeks from the date of receipt of a copy of this Judgment.

13. On such deposit being made by the appellant/Insurance Company, the 1st & 2nd claimants/1st & 2nd appellants are permitted to withdraw their respective shares in the same proportion as was ordered by the Tribunal, together with interest accrued thereon, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

14. Since the 3rd to 5th appellants/3rd to 5th claimants are stated to be minors as they were aged only 17, 13 & 7 years at the time of filing of the claim petition, their shares shall be deposited in an interest bearing account and the interest shall



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be allowed to be withdrawn by the 1st claimant/1st respondent for the benefit of the minors. On attaining the age of majority, the 3rd to 5th appellants/3rd to 5th claimants may also file appropriate application for withdrawing their shares of compensation.

15. There is an endorsement in the court file that the sixth respondent who is the father of the deceased also died. So far, no steps have been taken. It appears that the wife of the sixth respondent has also pre-deceased. Both were class-I heir of the deceased Chinnasamy. Since the compensation to be paid under the Motor Vehicles Act on the dependents, the proportionate amount of the share of the sixth respondent is directed to be paid to the other respondents 1 to 5 /claimants 1 to 5 being the wife and children of the deceased Chinnasamy equally. The present Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (AD-II)

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Sub Assistant Registrar

Vv

To:

1. The Motor Accidents Claims Tribunal,
The Special District Judge,
Dharmapuri.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mr.C.E.Pratap, Advocate, S.R.No.24820

+1cc to Mr.K.Vinod, Advocate, S.R.No.24809

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SR-II (CO)
CB(20/10/2021)