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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2169 of 2017

and

C.M.P.Nos.11476/2017 & 13884/2018

United India Insurance Co.Ltd.,
3, Giriam Buildings Main Road,
Gobichettipalayam,
Erode District.

...Appellant/3rd Respondent

Vs

1.Jayaseela

2.Minor Sivakumar
S/o.(Late) Venkate Gowda

3.Minor Vinothkumar
S/o.(Late) Venkate Gowda

4.D.Kandhasamy

5.M/s.Senthil Ram Transport
Rep.by its Managing Partner,
D.No.18B, Mettupalayam Road,
Sathyamangalam (Po) & (Tk),
Erode District.

6.National Insurance Co.Ltd.,
371/A, II Floor,
Prestige Shopping Arcade
Ramaswamy Circle,
Mysore-570 024.

...Respondents/3rd Petitioner/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree made in M.C.O.P.No.392 of 2010 on 09.08.2016 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) Court at Sathyamangalam, Erode.

For Appellant

: Mr.J.Chandran



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For Respondents : Mr.Suresh for
Mr.K.Moorthy for R1 to R3
Not ready in notice for R4
No appearance for R5 & R6

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3.

2. It is a case of fatal accident, where the two vehicles Mahindra pick up van and the passenger bus dashed against each other, in which, the driver of the pick up van died. The legal heirs of the deceased claiming compensation of Rs.20,00,000/- against the owner of the passenger bus and its insurer. The Tribunal has awarded a sum of Rs.12,85,800/- payable by the insurer of the bus.

3. The reasons stated by the Tribunal for fixing the liability on the appellant insurer is assailed in this appeal as perverse and non application of mind.

4. On hearing the learned counsels and perusing the records, this Court substantially concur with the submissions made by the learned counsel for the appellant. However, taking note of the facts that the respondents before this Court are the legal heirs of the deceased driver/owner of the pick up van and for the erroneous and imperfect claim petition drafted by their counsel and improper appreciation of evidence by the Tribunal, the victim of the accident should not be taken for ride. Hence, this Court instead of remanding back to the Tribunal for fresh appreciation of evidence take up the job of proper appreciation of law and evidence and passed the following judgment:

Facts:

5. On 21.05.2006, at about 10.00 a.m., near Shanbaga Pudur Bridge, Sathyamangalam Taluk, a Mahindra Max pick up van loaded with brinjal driven by its owner Venkate Gowda towards Coimbatore from Mysore dashed against the passenger bus bearing registration No.TN 36 Z 9355. In the said accident the owner-cum-driver of the Mahindra Max pick up van Venkate Gowda died on the spot and two other occupants badly incurred. First Information Report was registered against Venkate Gowda-the deceased driver of the Mahindra Max pick up van. Based on the information given by the driver of the bus, both the vehicles were subjected to Motor Vehicle Inspector's inspection who has noted extensive damage on the front side of both the vehicles. The complaint given by the driver of the bus Kandhasamy, who was



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Loss of dependency (Rs.7800 x 1/2 x 12 x 17)	Rs.7,95,600/-
Loss of Love and Affection (Claimants 2 and 3 Rs.20,000/- each)	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
Total	Rs.8,90,600/-

9. In the result, the compensation of Rs.12,85,800/- awarded by the Tribunal to the claimants is modified to Rs.8,90,600/-. Out of which, the appellant who is the 3rd respondent before the Tribunal shall be responsible to pay 50% of the total compensation i.e., Rs.4,45,300/- with interest at the rate of 7.5% p.a., from the date of filing the petition till the date of realisation.

10. From the records, this Court find that in compliance to the conditional order, the Insurance Company has already deposited Rs.2,00,000/-. Therefore, the balance award amount with interest shall be paid within a period of twelve weeks from the date of receipt of copy of the judgment. On such deposit, the first claimant shall be entitled to withdraw 50% of the award amount with accrued interest and from the balance 50% of the award amount with accrued interest shall be equally shared by the 2nd and 3rd claimants (i.e., 25% each). The claimants shall be permitted to withdraw the same on appropriate petition.

11. Accordingly, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected civil miscellaneous petitions are also closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpl
To

1. The (Subordinate Judge)
Motor Accident Claims Tribunal,
Court at Sathyamangalam, Erode.



2. The Section Officer
VR Section
High Court, Madras 104.

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+1 CC to Mr.J.Chandran, Advocate sr 15224.

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KK (CO)
SP (26/10/2021)