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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.2155 of 2012

and

M.P.No.1 of 2012

New India Assurance Company Ltd.,
Pillars Gate, Ballanore Road,
Nagercoil.

... Appellant/2nd Respondent

Vs.

1.C.Shanthi
2.Darvin Bright
3.Sarala
4.N.Balakrisnan
5.Rubby
6.Thangaiah

...1 to 3 Respondents/Petitioners

(Amended as per Order I.A.No.974/2006
dated 01/09/2006)

...4 to 6 Respondents/
1,3 and 4 Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 14.12.2011 passed in M.C.O.P.No.431 of 2004 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) Chengalpattu.

For Appellant :M/s.Elveera Ravindran

For R1 to R3, R5 & R6 :Mr.K.Varadhakamaraj

For R4 :NDW vide order dated:12.07.18

J U D G M E N T

Challenging the judgment and decree dated 04.09.2012 passed by the Motor Accidents Claims Tribunal (Principal Subordinate Judge) Chengalpattu, in M.C.O.P.No. 431 of 2004, the Insurance Company has come up with the present Appeal.



2. The first respondent/claimant is the wife, second and third respondents/claimant are the daughters and fifth and sixth respondents/claimants are the mother and father of the deceased T.Chandran, who died in a motor accident. The accident is said to have taken place on 16.06.2004 at about 2.00 p.m while the deceased was riding on his motor cycle bearing Registration Number TN-05 A 3050 from Chetty Kulam to Beach Road, near Saralur Junction, an auto bearing Registration No.TN-74-C-3528 insured with the appellant Insurance Company belonging to the 4th respondent, which was standing on the left side of the road, suddenly taken by its driver, who drove the same in a rash and negligent manner and dashed against the motorcycle. As a result of which, the deceased fell down and sustained fatal injuries on his head.

3. The appellant- Insurance Company has filed a counter affidavit in which it was stated that the deceased was riding his motor cycle on the proper side of the road and that the driver of the auto owned by the 4th respondent has driven the vehicle in a rash and negligent manner without following the traffic rules and regulations and had hit the deceased. It is further stated that the driver of the 4th respondent's vehicle was not having valid and effective driving licence at the time of accident and also the 4th respondent's vehicle was not insured with the appellant Insurance Company and hence, the appellant is not liable to pay any compensation to the respondents 1 to 3, 5 and 6.

4. After considering the pleadings, oral and documentary evidence on record, the Tribunal has awarded a sum of Rs.3,88,200/- under the following heads:-

S.No.	Heads	Amount awarded by the Tribunal (Rs.)
1	Loss of earning power (Rs.2,000x12 x13)	3,12,000/-
2	Medical Expenses	39,200/-
3	Loss of Consortium	15,000/-
4	Loss of love and affection	20,000/-
5	Transport and funeral expenses	2,000/-
	Total	3,88,200/-



5. Aggrieved by the same, the appellant - Insurance Company has filed this Civil Miscellaneous Appeal.

6. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the goods vehicle belonging to the 4th respondent and directed the appellant Insurance Company being insurer of the said vehicle to pay a sum of Rs.3,88,200/- as compensation together with interest at the rate of 7.5% and cost from the date of the claim petition to the Respondent Nos.1 to 3, 5 and 6 herein who were the claimants before the Lower Court.

7. The learned counsel for the appellant Insurance Company would submit that the Tribunal failed to note that as per Ex.P.1 - FIR, the accident was caused by the rash and negligent act of the deceased, who drove his motor cycle in a rash and negligent manner and dashed against the compound wall and that there was no reason as to how the vehicle bearing Registration No.TN-74-C-3528 came to be identified as the vehicle which caused the accident. The learned Tribunal failed to note that as per Ex.P.2/ Form A.I.R, which clearly shows that the insured vehicle had no damages. Hence, it clearly proves that the insured vehicle was not involved in the accident.

8. Per contra, the learned counsel for the respondents/claimants 1 to 3, 5 and 6 would submit that the impugned Judgment and Decree was a well reasoned one and requires no interference.

9. I have considered the arguments advanced by the learned counsel for the appellant Insurance Company and the learned counsel for respondents/claimants 1 to 3, 5 and 6 and I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

10. From a reading of the impugned Judgment and Decree passed by the Tribunal, it is noticed that the Tribunal had held that the police, after investigation, laid charge sheet against the driver of the 4th respondent Auto regarding his negligent act. The driver of the Auto was acquitted on the reason of benefit of doubt and therefore, the acquittal has no effect in this case. The Tribunal has come to a conclusion that the accident had taken place due to rash and negligent driving of the insured Auto belonging to the 4th respondent.



11. Considering the above, I find no merits in the present Civil Miscellaneous Appeal filed by the appellant Insurance Company. Therefore, the amount awarded in the impugned Judgment and Decree by the Tribunal is confirmed.

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12. Therefore, the appellant Insurance Company is directed to deposit the entire compensation awarded by the Tribunal together with interest and costs as directed by the Tribunal, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

13. On such deposit, respondents/claimants 1 to 3, 5 and 6 are permitted to withdraw the same together with interest and costs in the same proportion as directed by the Tribunal in the impugned Judgment and Decree, less the amount already withdrawn if any, by filing suitable applications before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

kkd

To

1.The Motor Accident Claims Tribunal
(Principal Subordinate Judge) Chengalpattu.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.Elveera Ravindran, Advocate SR.No.19864
+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.19867

C.M.A.No.2155 of 2012

SKM(CO)
CB(29/04/2022)