IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : **22.09.2022**

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1368 of 2018
and
C.M.P.No.10955 of 2018

MAGMA HDI General Insurance Company Limited,
rep.by its Manger,
having its registered office
at II Floor,
Sri Complex,
No.1510, Trichy Road,
Coimbatore – 641 001. ... 2nd Respondent/Appellant

Vs.

1.Valliammal
2.Sellammal
3.Maran …Petitioners/Respondents
4.P.Sasikumar ...1st Respondent/Respondents
5.P.Singaram …2nd Respondent/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 15.02.2018 in

M.C.O.P.No.104 of 2015 on the file of the learned Special District Judge, Motor Accidents Claims Tribunal, Erode.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.S.Kaithamalai Kumaran
for R1 to R3

R4 – Served – No appearance

Not ready in notice regarding R5

JUDGMENT

Aggrieved by the Award passed by the learned Special District Judge, Motor Accidents Claims Tribunal, Erode, in M.C.O.P.No.104 of 2015, the Insurance company is before this Court.

2.The appellant is aggrieved by the fact that the First Information Report and the evidence of RW2 would clearly show that the accident has occurred only on account of the negligence of the deceased who is the rider of the two wheeler and that there was no violation on the part of the driver of the 1st respondent's lorry, bearing Registration No.HR 55G 7039 which was insured with the 2nd respondent/appellant.

3.The first and third respondents are the owners of the lorry and the second respondent is its insurer. The claimants are the wife and parents of one Durairaj who had died in a road accident on 20.11.2014. He was carrying on business as an Electrician as well as a real estate agent. The petitioners had claimed a compensation of a sum of Rs.20 lakhs. It is their case that on 20.11.2014, when the deceased Durairaj was travelling along with his friend Arasakumar in a Super Splendor bike, bearing Registration No.TN 45AF 5907 which was ridden by the deceased Durairaj, the motor cycle had collided with the lorry coming in the opposite direction and the accident had occurred only on account of the rash and negligent driving of the driver of the lorry. Therefore, the claim petition had been filed seeking compensation.

4.The 2nd respondent had filed a counter *inter alia* contending that the accident had only occurred on account of the fact that the deceased Durairaj had attempted to overtake another vehicle and while doing so, he had not noticed the respondent's lorry coming in the opposite direction and consequently, gone to the extreme right of the road and hit the 1st respondent's lorry resulting in his death. The Insurance company would therefore submit that they were not liable to pay compensation for the death of the deceased who is himself a tortfeasor and the accident had occurred only on account of his negligence. The Tribunal appears to have made special pleadings in favour of the claimants.

5.A perusal of Ex.P.1 - First Information Report which was lodged by none else than the brother of the deceased Durairaj clearly narrates the sequence of the events. That apart, RW2, the driver of the lorry was also examined and he has reiterated the contents of the First Information Report. He is an interested witness. The Insurance company has not examined any other third party to prove the accident. Ultimately, the compensation of a sum of Rs.9,94,720/- was awarded. The Tribunal had fixed a monthly notional income of Rs.6500/- and arrived at a loss of earning by adding 25% future prospects and deducting 1/3 towards personal expenses from the total income and adopted a multiplier of 14. The Insurance company is aggrieved by the fact that the Tribunal has not given any reason for ignoring the contents of the First Information Report and also appreciating the evidence of RW2.

6.The learned counsel for the Insurance company would submit that the First Information Report has been lodged by none else than the brother of the deceased Durairaj. He has not only narrated the manner in which the accident had occurred but would also state that he has personally verified the same. In the light of the such a categoric admission, the Tribunal has erred in holding the driver of the lorry responsible for the accident. That apart, he would submit that the petitioners have not examined the driver of the offending vehicle and also the brother who has given the First Information Report. By reason of which, an adverse inference should be drawn against the plaintiff. He would submit that at best the claimants would be entitled to the amounts under the "No fault liability".

7.Per contra, the learned counsel for the petitioners would submit that the Insurance Company has not taken any steps to examine the witnesses to the accident. He would submit that the adverse inference has to be drawn since the First Information Report had not been lodged by the driver of the bus which they ought to have filed. He would submit that Ex.A.1 - First Information Report cannot be taken as a gospel truth and at best, it is only a hearsay evidence. Therefore, the same has to be accepted with a pinch of salt.

8.Heard the learned counsel for the appellant and perused the papers.

9.The First Information Report had been lodged by non else than the brother of the deceased. Apart from narrating the sequence of the accident he has also stated that he had personally verified the said statement. Therefore, this statement given in the First Information Report cannot be treated as a hearsay. Therefore, the First Information Report has to be accepted as a true statement with regard to how the accident had taken place. This would clearly show that the deceased had crossed over to the other side of the road and gone to the extreme right and hit the Lorry. Therefore, there is no negligence on the part of the driver of the 1st respondent's lorry. The statement given in the First Information Report has been corroborated by the driver of the Lorry. The petitioners have kept away the best evidence, namely, the person who drove pillion on the fateful day and the author of the First Information Report.

10.Therefore, in view of the above discussion, the Award passed by the Tribunal has to necessarily be set aside and is accordingly set aside. The Insurance Company is liable to only pay the amount under the head of "no fault liability" which is the sum of Rs.50,000/- (Rupees fifty thousand only) since the accident has occurred only on account of the negligence of the deceased.

11.This Civil Miscellaneous Appeal is allowed and the Award of the Tribunal is modified, reducing the compensation amount to Rs.50,000/-. The Appellant/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.104 of 2015 on the file of the learned Special District Judge, Motor Accidents Claims Tribunal, Erode, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment.

On such deposit being made, the claimants are permitted to withdraw the award amount, along with proportionate accrued interest and costs as apportioned by the Tribunal by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

22.09.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The Special District Judge,
Motor Accidents Claims Tribunal,
Erode.

P.T. ASHA, J,

mps

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