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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.NO.1734 OF 2018

AND

CMP.NO.13384 OF 2018

The HDFC ERGO General Insurance Co., Ltd.,
528, Anna Salai,
Chennai - 2.

...Appellant / 2nd Respondent

Vs.

1.Rani

2.Amudha

3.Saravanan

4.Ganesh

...Respondents 1 to 4 / Claimants

5.SRM Transport India Private Limited,
SRM Nagar, Kattankulathur, Chengalpet Taluk,
Kancheepuram District - 603 203.

...5th Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 05.01.2018 in MCOP No.630 of 2014 on the file of the Motor Accident Claims Tribunal / III Additional District Court, Tiruvallur, Poonamallee.

For Appellant : Mr.K.Vinod

For R1 to R4 : Mr.C.Richard Suresh Kumar

For R5 : No appearance

JUDGMENT

The 2nd respondent / The HDFC ERGO General Insurance Company Limited in MCOP No.630 of 2014, which was on the file of the III Additional District Court / Motor Accident Claims Tribunal, Poonamallee at Tiruvallur District is the appellant herein. They are aggrieved by the direction given in the order passed in the



aforementioned MCOP No.630 of 2014 dated 05.01.2018 to pay the compensation awarded for the unfortunate death of G.Boopathy owing to an accident and later recover that particular compensation from the 1st respondent in the claim petition / SRM Transport India Private Limited.

2.Before this Court, the said SRM Transport India Private Limited had been shown as the 5th respondent in this Appeal. Notice had been directed to be issued. A perusal of the Court records shows that notice issued through Court had been served on them on 22.09.2018. The appellant had given up the aforementioned 5th respondent in the Civil Miscellaneous Petition and retained them as a 5th respondent in the Appeal.

3.The brief facts of the case before the Tribunal are that the deceased G.Boopathy was proceeding in a bi-cycle from Porur to Kundrathur Main Road on 26.07.2014 at around 7:20 p.m. When he reached Parimalam Theatre, a Cement Ready Mix Lorry bearing Regn. No.TN-19-B-9186 owned by the 1st respondent, is said to have come in a rash and negligent manner and had hit his bi-cycle from behind. G.Boopathy sustained injuries and was admitted to Madha Hospital, Kovur, but he unfortunately died. The claimants claimed that the accident occurred only due to the rash and negligent manner in which the Cement Ready Mix Lorry was driven.

4.The claim petition was filed by the legal representatives.

5.A counter statement was filed before the Tribunal by the appellant herein, who was the 2nd respondent in the claim petition. They very specifically stated that there were no policy binding them to indemnify the vehicle of the 1st respondent. They specifically stated that there is no contract of Insurance between them and the 1st respondent on the date of the accident.

6.The Motor Accident Claims Tribunal, Poonamallee, took up the claim petition for trial and during the course of trial, two witnesses were examined as PW-1 and PW-2 and Exs.P1 to P10 were marked on the side of the petitioners / claimants. Among the documents on the side of the petitioners, the First Information Report had been marked as Ex.P1, the Insurance Policy was marked as Ex.P4, the Charge Sheet was marked as Ex.P7 and the Motor Vehicle Report was marked as Ex.P9. On the side of the Insurance Company, Insurance Policy was marked as Ex.R1 and RW-1 was examined.

7.The Tribunal first proceeded to determine whether the accident occurred due to the rash and negligent act of the driver of the 1st respondent. In this connection, the Tribunal



relied on the First Information Report, which was marked as Ex.P1. It was found that the bi-cycle driven by G.Boopathy was hit from behind by the Cement Ready Mix Lorry of the 1st respondent and in view of that particular fact, the negligence was placed on the lorry driver of the 1st respondent. I would confirm that finding.

8.With respect to the age of the deceased it was found that the deceased was aged about 50 years, but the Tribunal determined it as 58 years, in view of Exs.P2, P3 and P5 and adopted a multiplier '9'. With respect to the income of the deceased, it was stated that he worked as a Carpenter and was earning a sum of Rs.1,000/- per day. The Tribunal determined that Rs.300/- per day would be a reasonable amount and arrived at the monthly income at Rs.9,000/- and 1/4th was deducted towards his personal expense and the contribution to the family was taken at Rs.6,750/-. With respect to the Loss of Dependency, the Tribunal arrived at a sum of Rs.7,29,000/-(Rs.6,750 x 12 x 9).

9.Here, I would grant 10 % additional towards future prospects, which would mean Rs.675/-. Now the total monthly income will be Rs.7,425/- (Rs.6,750/- + Rs.675/-) and the annual income will be Rs.7,425/- (Rs.7,425 x 12 x 9). Now, the Loss of Dependency is arrived at a sum of Rs.8,01,900/-.

10.The Tribunal also granted a sum of Rs.15,000 towards Funeral Expenses and towards loss of Love and Affection a sum of Rs.75,000/- was awarded to each to the petitioners 2 to 4. But a sum of Rs.40,000/- shall be granted to them which means Rs.1,20,000/- can be granted, for loss of Love and Affection. The Tribunal also granted a sum of Rs.15,000/- towards loss of Estate and Rs.10,000/- towards Transport Charges, which I would retain. It also granted a sum of Rs.40,000/- towards loss of Consortium, which is also retained.

11.The compensation granted by the Tribunal and now granted is as follows:

Heads	Tribunal's Award Amount	Amount now Enhanced
Loss of Dependency	Rs.7,29,000/-	Rs.8,01,900/-
Loss of Love and Affection	Rs.2,25,000/-	Rs.1,20,000/-
Loss of Estate	Rs.15,000/-	Rs.15,000/-
Transport Charges	Rs.10,000/-	Rs.10,000/-
Funeral Expenses	Rs.15,000/-	Rs.15,000/-
Loss of Consortium	Rs.40,000/-	Rs.40,000/-
Total	Rs.10,34,000/-	Rs.10,01,900/-



13. The appellant had challenged the finding of the Tribunal that the appellant / Insurance Company should pay the compensation and recover it from the 5th respondent herein / SRM Transport India Private Limited. It had been asserted that the policy was only for the period from 12.02.2013 to 11.02.2014. RW-1 had been examined and Ex.R1 had been marked. On the date of the accident, there was no policy at all. However, the Tribunal had wrongly concluded that the amount should be paid by the appellant herein and recovered from the 5th respondent herein.

15.The Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

17. The 1st to 4th respondents / claimants are permitted to proceed in manner known to law against the 5th respondent herein for recovery of the amount awarded aforementioned of Rs.10,01,900/- together with interest at 7.5% per annum from the date of filing of the petition till the date of deposit. They are also entitled to seek recovery of the costs of the Claim Petition.

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To:-

1.The III Additional District Judge,
Tiruvallur, Poonamallee /
Motor Accidents Claims Tribunal,
Poonamallee.

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

+1cc to Mr.K.Vinod, Advocate Sr.No.20299

CMA.No.1734 of 2018
and
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KV(CO)
RVM(11/05/2022)