IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.No.2585 of 2019

1.P.Kaliyammal

2.P.Malliga

3.Sivagami

4.P.Murugesan

5.Lakshmi ... Appellants

vs.

1.Vinothkumar

2.Mohamed Muneer

3.Bharti Axa General Insurance Co. Ltd.,
Erote,
Rep.by its Manager,
100/1, Perundurai Road,
Veerappalayam Pirivu,
Erode-638 011.

4.The Managing Director,
PEAK SUZuKI,
100/1, Perundurai Road,
Veerappalayam Pirivu,
Erode-638 011.

5.The Branch Manager,
National Insurance Company Ltd.,
Branch office,
Palaniappa Complex, Mettur Road,
Erode
(R3 amended vide Court order
Dated 14.12.2018 made in
C.M.P.N o.22655/2018 in
C.M.A.SR.No.62165/2018(VMVJ)

R5 impleaded as a party respondent
Vide Court order dated 14.12.2018
made in C.M.P.No.22655/18 in
C.M.A.SR.No.62165/2018(VMVJ) ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, for enhancement of the compensation amount awarded in the Judgment and Decree dated 28.04.2017 made in M.C.O.P.No.263 of 2015 on the file of the Motor Accident Claims Tribunal / Special District Court, Erode.

For Appellants : Mr.M.Guruprasad
For Respondents : Mr.N.Manokaran [R4]
Mr.S.Vadivel [R5]
R1 & R3 – Served – No Appearance
R2 – Not ready in Notice

JUDGMENT

Aggrieved by the award passed by the Motor Accident Claims Tribunal / Special District Court, Erode, in M.C.O.P.No.263 of 2015, the petitioners are the appellants before this Court. The award is challenged on the ground that the Tribunal below has exonerated the 3rd respondent/Insurance Company from the liability to pay the compensation which has now been mulcted only upon the respondents 1 and 4.

2. The brief facts that are necessary for appreciating the issue on hand is as follows:

The petitioners are the legal representatives of one Periyannan an agricultural coolie, aged about 70 years who had passed away in a road accident that took place on 09.2.2014 at 6 p.m. On the said date, the said Periyannan was returning home on the Nathagoundanpalayam to Aanaikalpalayam road. At that time, the 1st respondent drove the two wheeler bearing Reg.No.TN-33-BH-6742 from the opposite direction in a rash and negligent manner and hit the said Pariyannan, who had sustained simple injuries below his knee and grievous injuries to his head. Ultimately, he succumbed to his injuries on 21.12.2014 at the hospital due to traumatic brain injury and septic shock. The claimants who are the wife and children of late Periyannan had claimed a total compensation of Rs.11,09,400/-. It was their contention that the said Periyannan earned a sum of Rs.5,000/- per month. The 1st respondent was the person who was riding the vehicle on the ill fated day. The 2nd respondent is the owner of the vehicle and the 3rd respondent is the insurer of the vehicle. The vehicle was entrusted with the 4th respondent for servicing and the 4th respondent in turn was insured with the 5th respondent under a motor trade policy.

3. The 2nd respondent, owner of the vehicle had filed a counter statement *inter-alia* contending that he had handed over the vehicle to the 4th respondent for service and after service, the vehicle was delivered to him on 11.12.2014. It is in the interregnum that the vehicle has been involved in the accident about which the 2nd respondent was unaware. It is only when the police made an enquiry with them that they had come to know about the accident. Therefore, it is the contention of the 2nd respondent that on the date of accident, he was not in control on possession of the same and without prejudice to the contentions, the 2nd respondent submitted that the alleged vehicle was insured with the 3rd respondent under a policy which was valid from 17.09.2014 to 16.09.2015.

4. The 3rd respondent / Insurance Company had filed counter statement in which apart from denying the various allegations contained in this claim petition, including compensation claim, the Insurance Company had submitted that the 1st respondent did not possess an effective and valid driving licence on the date of the accident and therefore, the 3rd respondent was not liable to compensate the petitioners/claimants.

5. At the time of accident, the rider of the motor cycle namely, the 1st respondent had driven the vehicle without a valid driving licence and therefore, the Insurance Company was not liable to compensate the petitioners. The 3rd respondent further submitted that the accident had occurred only on account of the rash and negligent driving of the rider of the 1st respondent.

6. The 4th respondent had filed counter denying the various allegations contained in the affidavit and claim petition they had denied the injuries claimed by the petitioners and had put the petitioners to strict proof of their claim.

7. Before the Tribunal, the 4th petitioner was examined as PW1 and two others namely Kumar and Saravanan were examined as PWs 2 and 3 as eye witness of the accident and Exs.P1 to P16 were marked. On the side the respondents, the 2nd respondent was examined as DW1 and the Authorised Signatory of the 3rd respondent was examined as DW2 and the Assistant Manager of the 5th respondent / Insurance Company was examined as DW3 and Exs.R1 to R11 were marked.

8. Ultimately, the Tribunal below held that the accident had occurred on account of rash and negligent driving of the 1st respondent and had arrived at a compensation of Rs.5,20,400/- together with interest @ 7.5% p.a. The Tribunal had raised a third issue as to who amongst the respondents were liable to compensate the claimants and ultimately held that the 1st and 4th respondent were jointly and severally liable to pay the award amount.

9. The Tribunal held that the 2nd respondent is the owner of the offending vehicle bearing Reg.No.TN-33-BH-6742 who had entrusted the

vehicle for servicing to the 4th respondent. This fact is admitted by the 4th respondent. While the vehicle was entrusted with the 4th respondent for servicing, the 4th respondent had entrusted the vehicle to a person who did not possess a valid driving licence and therefore, the negligence is squarely on the shoulder of on the 4th respondent. Since the accident had occurred while the vehicle was entrusted to the 4th respondent, the Tribunal below had exonerated the Insurance Company, the respondents 3 and 5 fixed the liability on the respondents 1 and 4. Aggrieved by the exoneration of the 3rd and 5th respondent Insurance Companies, the petitioners have filed this appeal.

10. Heard the learned counsels on either side and perused the materials on record.

11. Considering the fact that the accident had occurred when the said vehicle was entrusted with the 4th respondent for servicing and was in his care and custody, the award passed by the Tribunal cannot be called into question particularly, when the 4th respondent had not challenged the award

passed by the Tribunal, in M.C.O.P.No.263 of 2015. The quantum of compensation is also very reasonable.

12. In the result, this Civil Miscellaneous Appeal stands dismissed and the Judgment and Decree dated 28.04.2017 made in M.C.O.P.No.263 of 2015 on the file of the Motor Accident Claims Tribunal / Special District Court, Erode, is confirmed. No costs.

14.10.2022

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Special District Court, Erode.

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

P.T.ASHA, J.,

ssn

C.M.A.No.2585 of 2019

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