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C.M.A.No.1969 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2023

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THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

C.M.A.No.1969 of 2018 and CMP No.15302 of 2018

The United India Insurance Company Ltd.,
Branch Office
No.111, Arjuna Towers, 2nd Floor
No.248/164, Cherry Road, Salem.

.. Appellant

.. Vs..

1.P.N.Chitra
2.D.Deepika
3.Minor D.Priyadharshini
4.M/s.Murugesan Institute of Technology
Aathur Main Road
Kariaapatti, Salem District-636 106

.. Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP No.842 of 2014, dated 20.10.2017 on the file of the Motor Accident Claims Tribunal / Special District Judge, Salem.

For Appellant : Mr. Dhiraviyanathan

For Respondents : Mr.P.Jagadeesan - R1 to R3

No Appearance - R4



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JUDGMENT

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The appeal on hand is filed against the judgment and decree dated 20.10.2017 passed in MCOP No.842 of 2014, on the file of the Motor Accident Claims Tribunal/Special District Judge, Salem.

2. The United India Insurance Company Limited has filed this appeal questioning the quantum of compensation.

3. The accident occurred on 27.12.2012 at 6.30 p.m., at Harur to Ayyothiappattanam Main Road, opposite to Sukampatti Panchayat Office. The Veeranam Police Station registered a case in Crime No.428 of 2012. At the time of accident, the deceased was travelling as pillion rider in a TVS XL Super Moped bearing Registration No.TN 4 E 5738 which was driven by one Prabu, Son of Ranganathan from Government High School, Sukkkampatty to Union Office, Ayyothiappattanam. The deceased, due to the accident, sustained fatal injuries all over the body and died in the hospital. Thereafter, the claim petition was filed and the Tribunal adjudicated the



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issues with reference to the documents and evidences. The appellant/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.8,87,008/-.

4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the alleged offending vehicle/bus was not involved in the accident at all. It is further contended that the Tribunal has erred in relying upon Ex.P1, FIR which was marked through the 1st respondent/claimant without examining the author of the document. The Tribunal has failed to consider the fact that the driver of the bus was released by the Veeranam Police without sending the vehicle for MVI inspection. The Tribunal has also failed to consider the evidence of RW3 viz., the Sub Inspector of Police that the said bus was not involved in the accident and hence, a final report has been filed as “Mistake of Fact” and the said bus was not sent to MV Inspection. But, without considering the above said facts, the Court below has wrongly fastened the liability against the owner of the bus and the appellant/Insurance company which has to be



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set aside. This apart, the quantum of compensation granted by the Tribunal is exorbitant and the principles settled in the case of **National Insurance Company Ltd., v. Pranay Sethi & others** reported in **2017(2) TN MAC 609 (SC)** by the Apex Court has not been followed by the Tribunal. The compensation granted towards funeral expenses, loss of consortium and loss of love and affection are on the higher side and based on that, the appellant/Insurance Company has chosen to file the present appeal and this appeal has to be allowed.

5. Per contra, the learned counsel for the respondents 1 to 3 submitted that after analysing the oral and documentary evidence, the Tribunal has rightly come to a conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the 4th respondent college bus and has rightly fixed the liability against the owner of the bus and the Insurance company. It is clearly stated in the FIR that the college bus was involved in the accident and hit against the deceased and therefore, there is no need to interfere with the order passed by the Court below.



6. A perusal of records would show that the FIR (Ex.P1) has been registered against the bus driver of the 4th respondent college. The driver of the bus was examined as RW1 before the Tribunal and has stated in his evidence that when he had taken the bus to the Veeranam Police station, they instructed him to take the bus. The learned counsel for the appellant/Insurance company mainly contended that Ex.R8 is the Accident Register copy of the deceased and it was admitted by the rider of the TVS XL namely Mr.Prabu, who was examined as PW2 that he did not mention that the bus was involved in the accident. But, the Tribunal has failed to discuss about Ex.R8 Accident Register and the evidences of RW1 to RW4. Further, the original of Ex.X6 final report has also not been filed before the Tribunal. In the above said circumstances, this Court is of the considered view that it would be appropriate to remand back the matter to the Tribunal for fresh disposal. It is open to the respondents 1 to 3 /claimants to call for the original of Ex.X6 final report from the police station and establish their case before the Tribunal.



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7. For the reasons stated above, the judgment and decree dated 20.10.2017 on the file of the Motor Accident Claims Tribunal / Special District Judge, Salem, is set aside and this case is remitted back to the learned Special District Judge, Salem for a fresh disposal. The learned Judge is directed to dispose of the case in MCOP No.842 of 2014 after analysing Ex.R8 Accident Register and Ex.X6 final report and pass appropriate orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

8. With the above direction, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The Special District Judge,
The Motor Accident Claims Tribunal,
Salem.
- 2.The Section Officer,
V.R Section,
High Court, Madras.



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A.A.NAKKIRAN, J.

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