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C.M.A. No.476 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.476 of 2018

and

C.M.P. No.4283 of 2018

United India Insurance Company Limited
No.58, Purasaiwakkam High Road,
Chennai - 600 007

... Appellant

Vs.

1. Ms.P.Poonjolai

2. Ms.P.Jaya

3. Ms.P.Meena

4. Ms.P.Gunammal

5. Mr.S.Kumar

6.Selvi.K.Shopana

Represented by her Father and Natural Guardian Mr.S.Kumar

7. Selvan K.Vigneswaran

Represented by her Father and Natural Guardian Mr.S.Kumar

8. Selvan K.Mugesh

Represented by her Father and Natural Guardian Mr.S.Kumar

(Respondents 5 to 8 legal heirs of
the deceased P.Jayalakshmi, D/o Perumal)



9. Neel Metal Fanalca Envr P Ltd.,
No.6, Muthiya Street,
Lloyds Colony
Royapettah
Chennai - 600 014

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Order 44 Rule 1 of Civil Procedure Code, to set aside the Award and decree dated 07.10.2017 made in M.C.O.P. No.849 of 2010 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1, to deal with MCOP Cases, Small Causes Court) Chennai.

For Appellant : Mr.A.Dhiraviyanathan

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed to set aside the Award and decree dated 07.10.2017 made in M.C.O.P. No.849 of 2010 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1, to deal with MCOP Cases, Small Causes Court) Chennai.

2. The respondents 1 to 8 are the claimants. The 9th respondent is the owner and the appellant is the insurer of the offending vehicle.



3. The case of the claimants is that on 23.08.2009, at about 3.30 p.m., when Mrs.Rajammal was standing on the south corner of the 2nd Cross Street, Trustpuram, Kodambakkam, one Neel Metal Fanalca Lorry (Garbage carrying lorry) bearing Regn. No.TN-07-AS-9265 which was driven by its driver in a rash and negligent manner from east to west, dashed against the said Rajammal and thereby, she fell down and sustained grievous injuries and died on the spot.

4. The legal representatives of the deceased Rajammal filed a claim petition in MCOP No.849 of 2010 on the file of the Motor Accident Claims Tribunal (Special Court No.1, Small Causes Court), Chennai, claiming compensation of Rs.29,64,000/- which was restricted to a sum of Rs.10,00,000/- against the owner and insurer of the offending vehicle.

5. In order to substantiate the claim before the Tribunal, on the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 10 documents were marked as Ex.P.1 to Ex.P10. On the side of the 2nd respondent, one witness was examined as R.W.1 and 2 documents were marked as Ex.R1 and Ex.R2.



6. Before the Tribunal, the 1st respondent/9th respondent herein, remained ex-parte.

7. The Tribunal, after hearing both sides and considering the materials available on record, awarded compensation of Rs.6,30,000/- with cost and interest at 7.5% per annum and directed the 2nd respondent therein/Insurance Company to pay the compensation from the date of claim petition till the realization (except for the default period till the date of restoration i.e. from 15.10.2012 to 19.08.2015 as per the order in M.P. No.40 of 2013 dated 19.08.2015).

8. Challenging the said Award passed by the Tribunal, the Insurance Company has filed the present appeal.

9. The learned counsel for the appellant/Insurance Company submitted that the accident had happened not due to the rash and negligent driving of the driver of the said Lorry. Further, the driver of the lorry was not possessing valid licence and the said Lorry was not insured with the appellant/Insurance Company at the time of accident. When there is no policy



coverage, the appellant/Insurance Company is not liable to pay any compensation. The Tribunal has failed to consider the same and fastened the liability on the appellant/Insurance Company. Further, the age of the deceased at the time of accident was 85 years as per the entry made in the Accident Register, whereas, the Tribunal has adopted multiplier '7' which is also not correct. Even the compensation awarded by the Tribunal under the other heads also are exorbitant. Since the offending vehicle was not insured with the appellant/Insurance Company, they are not liable to pay any compensation. Therefore, the Award passed by the Tribunal is liable to be set aside.

10. Though substituted service was taken through paper publication and names also printed, none appeared on behalf of the respondents.

11. Heard the learned counsel for the appellant and perused the materials available on record.



12. The contention of the learned counsel for the appellant/Insurance Company is that the said Lorry was not insured with the appellant/Insurance Company and therefore, the appellant/Insurance Company is not liable to pay any compensation, whereas, the Tribunal has elaborately discussed that initially the policy was not marked and subsequently along with the written arguments, the policy was produced. Therefore, There is no dispute that the offending Lorry was insured with the appellant/Insurance Company. The FIR was also registered against the driver of the Lorry since the accident had occurred due to his rash and negligent driving. The deceased is only a third party. Though the learned counsel for the appellant /Insurance Company stated that the offending vehicle was not insured with the appellant/Insurance Company, the policy clearly shows that the offending vehicle was insured with the appellant/Insurance Company at the time of accident. Therefore there is no perversity in the findings of the Tribunal as far as liability is concerned.

13.As far as quantum is concerned, though in the Accident Register, the age of the deceased is mentioned as 85 years, in the post-mortem report, the age of the deceased is mentioned as 65 years and the



Tribunal has fixed the age mentioned in the post-mortem report i.e. 65 years and adopted multiplier '7' as per the guidelines given by the Hon'ble Supreme Court in the case of ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. Reported in (2009) 4 MLJ (SC) 997*** and deducted 1/4 towards personal and living expenses since the claimants 1 to 4 only were the dependents of the deceased and since the age of the deceased was fixed as 65 years, future prospects not considered. This Court does not find any perversity in the appreciation of evidence and the findings of the Tribunal.

14. A reading of the entire materials, this Court finds that the compensation awarded by the Tribunal is a “just compensation”. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to the costs.

14.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

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- 1.The Motor Accident Claims Tribunal
(Special Sub Court No.1, to deal with
MCOP Cases, Small Causes Court) Chennai.
- 2.The Section Officer,
VR Section, High Court, Madras.



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P.VELMURUGAN. J.

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