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C.M.A.No.1441 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1441 of 2020

and

CMP.No.10563 of 2020

The United India Insurance Co. Ltd.,
No.70, N.S.C. Bose Road, III Floor,
Sowcarpet, Chennai – 79.

...Appellant

Vs.

1. Annakili
2. Minor Shanthiya
3. Minor Saran
(2nd and 3rd respondents are majors and amended
as per order dated 18.04.2018 made in I.A.No.)
4. Minor Shalini
(Rep. By her Mother Annakili)
Pachaiammal (*died*)
5. T.Linanathan

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the award and decree passed in M.C.O.P.No.457 of 2011 dated 02.01.2020 on the file of the Motor Accidents Claims Tribunal (II Additional District Court), Tiruvallur at Poonamallee.



C.M.A.No.1441 of 2020

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.B.Thiyagarajan, for R1 to R4
: Notice not ready, for R5

JUDGMENT

Challenging the award and decree passed in M.C.O.P.No.457 of 2011 dated 02.01.2020 on the file of the Motor Accidents Claims Tribunal (II Additional District Court), Tiruvallur at Poonamallee, the appellant has come up with this appeal.

2. The case of the appellant is that, the respondents 1 to 4 filed a claim petition claiming a compensation of Rs.15,00,000/- on the ground that, on 19.05.2009 at about 17.20 hours, when the deceased Gopal was riding a Hero Honda two wheeler bearing Regn.No.TN-20-Q-1905, the appellant insured lorry bearing Regn.No.TN-22-BC-0106 owned by the 5th respondent driven by its driver in a rash and negligent manner, came in a high speed by overtaking a bus and hit the two wheeler in which the deceased was travelling, as a result of which, the deceased sustained fatal injuries all over



C.M.A.No.1441 of 2020

his body and died at the hospital. Thereby, the respondents 1 to 4/claimants being the dependents of the deceased filed a claim petition claiming compensation for the death of the deceased at the hands of the appellant and the 5th respondent. After contest, the tribunal, vide impugned judgment, awarded a compensation of Rs.13,24,000/-. Aggrieved with the said order, the appellant has come up with this appeal, questioning the liability of the insurer.

3. Learned counsel appearing for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the deceased and therefore, the FIR came to be registered against the deceased and the deceased being the tort-feasor, due to whose negligence the above said accident had happened, no claim can be made by the dependents of the deceased as against the insurer. While so, without considering the said facts, the tribunal had fixed the entire liability as against the appellant insurance company which cannot be acceded to and the same has to be necessarily interfered with.

4. Per contra, the learned counsel appearing for the respondents 1 to 4



C.M.A.No.1441 of 2020

submitted that, by considering all the relevant documents placed before it, the tribunal had awarded the compensation, which does not warrants interference of this Court. Accordingly, he prayed for dismissal of this appeal.

5. Heard learned counsel for the appellant and the learned counsel appearing for the respondents 1 to 4 and perused the material documents placed on record.

6. Though the appellant claimed that the above said accident happened solely due to the rash and negligent driving of the deceased and the same is evident from the FIR, Ex.P1, however, in order to prove the contents of the FIR, neither the driver of the appellant insured vehicle who gave the complaint nor any individual witnesses have been examined by the appellant and no documentary evidences have been produced by the appellant to show that the said accident had not happened due to the rash and negligence on the part of the driver of the appellant insured vehicle. Whereas, the respondents have examined two witnesses and the deposition



C.M.A.No.1441 of 2020

of P.W.2, Eye witness, clearly shows that the accident had happened due to the rash and negligent driving of the driver of the appellant insured vehicle, due to which a person lost his life, however, the appellant had failed to disprove the deposition made by the P.W.2 by adducing evidence. Hence, in the absence of any contra evidence to the deposition of the P.W.2, the tribunal had rightly fixed the entire liability as against the appellant, in which, this Court does not find any fault with.

7. Further, after perusal of the impugned award of the tribunal, this Court is of the view that, the compensation awarded by the tribunal is just and reasonable and the same does not warrant interference of this Court.

8. For the reasons aforesaid, this Appeal stands dismissed, confirming the award passed by the tribunal and the appellant-insurance company is directed to deposit the compensation awarded by the tribunal to the credit of M.C.O.P.No.457 of 2011 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



C.M.A.No.1441 of 2020

of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount as apportioned to the major claimants/respondents 1 to 3 directly to their bank accounts through RTGS within a period of two (2) weeks thereafter. Insofar as the 4th respondent who was a minor on the date of the filing of the petition, subject to her attainment of majority and production of proof thereof with regard to her majority, the minor 4th respondent is permitted to withdraw her share of apportionment along with proportionate interest and costs and the Tribunal is directed to keep the minor 4th respondent's share in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until she attain majority and interest derived from out of the said share of the minor shall be paid to the 1st respondent /mother every quarter to be utilised for the welfare of the said minor. No costs. Consequently, the connected Miscellaneous petition is closed.

14.12.2023

skt

NCC : Yes/No

6/8



C.M.A.No.1441 of 2020

Index : Yes/No
Speaking order : Yes/No

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To:

1. The Motor Accidents Claims Tribunal (II Additional District Court),
Tiruvallur at Poonamallee.
2. The Section Officer,
V.R.Section, High Court, Madras.



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C.M.A.No.1441 of 2020

M.DHANDAPANI, J.

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