IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.3954 of 2019
and
C.M.P.No.22505 of 2019

Shriram General Insurance Co. Ltd.,
1st Floor, Front Portion, No.64,
Sachin Plaza, Reddiyur Block No.1,
Salem – 636 016. ... Appellant

Vs.

1.Vijaya
2.Minor Thrisa
3.Minor Karthika
4.Minor Mohankumar
5.Kanniammal
6.Perumal
[Minors rep. by their next friend mother Vijaya]

7.Jaganathan ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 23rd day of April 2019 made in M.C.O.P.No.339 of 2017 on the file of the Motor Accident Claims Tribunal, (Special District Court), Dharmapuri.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.T.Ananthasekar [R1 to R6]
Not Ready in Notice [R7]

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JUDGEMENT

Challenging the award passed by the Motor Accident Claims Tribunal, Special District Court, Dharmapuri made in M.C.T.O.P.No.339 of 2017, dated 23.04.2019, the insurance company has preferred the present appeal.

2. The facts in brief are as follows :-

On 07.04.2017, when the deceased Raja was travelling as a pillion rider in the TVS XL Heavy Duty motorcycle bearing Reg.No.TN-29-AU-3398, a bore well Rig lorry bearing Reg.No.KA-01-MF-6248 coming in a rash and negligent manner, suddenly sounded horn and brushed the motorcycle of the deceased resulting in run over by the lorry leading to his death. Therefore, for the loss of income sustained by the claimants, the claimants have filed a claim petition before the Tribunal claiming a sum of Rs.15,00,000/- as compensation.

3. Before the Tribunal, the claimants have examined two witnesses viz., P.W.1 and P.W.2 and marked 5 documents viz., Ex.P.1 to Ex.P.5. On the side of the respondents, they have examined three witness viz., R.W.1 to R.W.3 and marked 6 documents viz., Ex.R.1 to Ex.R.6. On considering the oral and documentary evidence, the Tribunal awarded compensation in a sum of Rs.15,82,000/- under various heads, directing the insurance company to pay the said compensation to the claimants. Aggrieved by the same, the insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant/insurance company submitted that, the final report Ex.R.5 coupled with evidence of R.W.3/the Special Sub Inspector of Police clearly reveals that the deceased and his wife/P.W.1 were having a scuffle, which resulted in the deceased falling on the road and was run over by the lorry, for which, the lorry driver cannot be fastened with liability. Therefore, as an insurer of the lorry, the appellant is not liable to pay the compensation. It is the further submission of the learned counsel that, the age of the deceased has been accepted by the Tribunal on the basis of the post-mortem certificate and no document has been filed to establish the age of the deceased and therefore,

the compensation arrived at towards loss of income is highly disproportionate and the same requires interference.

5. Per contra, the learned counsel appearing on behalf of the respondents 1 to 6/claimants submitted that, the Tribunal has properly appreciated all the evidence and has rightly fastened the liability on the appellant/insurance company to pay the compensation to the claimants, which does not require any interference of this Court.

6. Heard the learned counsel appearing for the appellant/insurance company and the learned counsel appearing on behalf of the respondents 1 to 6/claimants and perused the materials available on record.

7. A perusal of the materials available on record reveals that the deceased fell on the road and was run over by the lorry. P.W.1 is the wife of the deceased, who had deposed that the deceased along with his brother was travelling in one motorcycle and P.W.1 and her sister's husband was travelling in other motorcycle and when the rider of the motorcycle in which her husband was travelling turned for filling up the petrol near

mango grove, the offending lorry driven in a rash and negligent manner sounding horn and dashed against the motorcycle of the deceased, which led to the deceased falling from the motorcycle and was run over by the lorry. P.W.2 has also spoken on the same lines as that of P.W.1, who had also witnessed the accident. Though the appellant/insurance company claims on the basis of the evidence of R.W.3 coupled with the final report/Ex.R.5 that there was a scuffle between P.W.1 and deceased leading to the deceased falling on the road and run over by the lorry, however, the oral evidence of P.W.1 and P.W.2 clearly shows that the deceased was travelling in one vehicle and P.W.1 was travelling in another vehicle. That being the case, the stand of the appellant/insurance company that there was a scuffle between P.W.2 and deceased, which led to the accident could not have happened and the final report/Ex.R.5 filed by P.W.3 cannot form basis for this Court to arrive at a finding that there was a scuffle. When P.W.2, an independent witness has spoken about the deceased and P.W.1 travelling in two different vehicles, the evidence of R.W.1, the Special Sub Inspector, who filed Ex.R.5, who has deposed to the effect that there was a scuffle, cannot be accepted. No contra evidence has been elicited from P.W.2 to defeat his very own version and such being the case, the Tribunal has rightly appreciated all the materials in proper perspective and has fastened the liability on the appellant/insurance company as the insurer of the lorry to pay the compensation, which cannot be interfered with.

8. Insofar as the contention of the appellant/insurance company that the Tribunal has fixed the age of the deceased on the basis of post-mortem certificate and not on the basis of the valid age proof, viz., Aadhar Card, Birth Certificate, etc., it is to be pointed out that the claimants have not filed any material to substantiate the age of the deceased. Though the claimants have claimed that the deceased was aged about 35 years, in the absence of any clinching age proof, necessarily, the Tribunal has ought to rely on a piece of evidence to establish the age of the deceased and in this regard, has averted to the age fixed by the doctor in the post-mortem certificate based on the characteristics of the deceased, which cannot be stated to be erroneous. If the appellant/insurance company wants to refuse the age from the one fixed by the Tribunal on the basis of the post-mortem certificate, necessarily, the same has to be proved by the appellant/ insurance company through documentary evidence and without placing any documents, it is not open to the appellant/insurance company to claim

that the Tribunal has fixed the age of the deceased wrongly on the basis of the post-mortem certificate, when the Tribunal has fixed it on prudent application of mind. Therefore, the said contention of the appellant/ insurance company also deserves to be rejected.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Accidents Claims Tribunal, (Special District Court), Dharmapuri in M.C.O.P.No.339 of 2017, dated 23.04.2019 is confirmed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

20.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accident Claims Tribunal, (Special District Court), Dharmapuri.

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

M.DHANDAPANI, J.,

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C.M.A.No.3954 of 2019

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