IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2023
CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN
C.M.A.No.2909 of 2022
and
CMP 22492 of 2022

United India Insurance Company. Ltd.,
Rep. by its Branch Manager,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road,
Namakkal-637 001. ... Appellant/2nd Respondent

Vs.

1.Malarveni
2.Mino. Sabari
3.Minor. Pachiyappan
4.Chinnapillai
5.Nagappan
...Respondents/Petitioners 1 to 5

6.K.Selvaraj ...Respondent/1st Respondent
7.P.Murugesan ...Respondent/3rd Respondent

8.The Branch Manager,
National Insurance Company limited,
Branch Office, Krishnagiri Town,
Krishnagiri Taluk and District.
...Respondent/4th Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and Judgment dated 09.03.2022 made in M.C.O.P. No.647 of 2016 on the file of Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

For Appellant	: Mr.C.Paranthaman
For RR1 to 5	: Mr.D.Rameshkuma
For R6 and R7	: No Appearance
For R8	: Mr.S.Vadivel

J U D G M E N T

The Appeal has been filed to set aside the decree and Judgment dated 09.03.2022 made in M.C.O.P. No.647 of 2016, on the file of the Motor Accident Claims Tribunal, Special District Court, Dharmapuri.

2.The second respondent/insurance company is the Appellant herein, challenging the quantum of compensation as well as the liability on the part of the Insurance Company as well as on the point of negligence.

3. The factum of the accident and the quantum of the compensation are not in dispute. The claim petitioners are legal representatives of the deceased Periyasamy who had filed the above M.C.O.P. No.647 of 2016, claiming compensation for the pecuniary loss due to the death of the said Periyasamy on the road transport accident that had happened on 03.07.2016.

4. The Tribunal examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P26. The United India Insurance has examined R.W.1/Selvaraj and no document has been filed. It is represented by the learned counsel for the appellant that pending claim petition, the claim petitioners have filed implead and amendment petition to implead the owner of the vehicle, in which deceased has travelled as well as its insurance company. The subsistence of the policy and the respective drivers are not in dispute.

5. The Tribunal, on consideration of the oral and document evidence, came to the conclusion that the accident had taken place due to rash and negligent driving of driver of the first respondent before the Tribunal, insured with the appellant/Insurance company and accordingly, the Tribunal fixed the liability in the ratio of 75% : 25%. The accident had occurred owing to following the insured vehicle which is proceeding before it for non keeping the distance required as per the Traffic rules, which resulted in the accident. It remains to be said that though Selvaraj, owner-cum-driver of the appellant/ Insurance company remained ex-parte, on Court's summons, he was examined as R.W.1 and his evidence is discussed infra.

6. Heard Mr.C.Paranthaman, the learned counsel appearing for the appellant, Mr.S.Vadivel, the learned counsel appearing for the 8th respondent/Insurance company and Mr.D.Ramesh Kumar, the learned counsel for RR1 to 5.

7. The point for consideration in this appeal is as to whether the Tribunal has taken into account the facts and fixed the liability at 75% : 25% between two vehicles, which is appropriate or not. P.W.1 is the widow of the deceased and she is not an occurrence wittness and P.W.2 is projected as an occurrence wittness. On cross-examination of P.W.2, he has stated that three Mahindra pick-up vehicle came from Mallupatti, while the deceased was travelling in the first vehicle, P.W.2 in the second vehicle and one Mr.Ramasamy in the third vehicle and they were travelling in the vehicles with Mango fruits to sell it in the Coimbatore, since, the lorry which was proceeding in front of the vehicles in which deceased travelled, without caution's has applied the brake in the middle of the road and it stopped and due to the sudden stopping of the vehicle, the vehicle of the deceased, which was insured with the appellant dashed from behind, resultantly, the deceased who was travelling in the first vehicle,

sustained injury and died on the spot. The first respondent before the Tribunal, remained ex-parte. On Court's summons, he was examined and he had narrated the accident. The vehicle was preceeding in front of his driven vehicle which having stopped suddenly,had dashed against a parked vehicle due to un-controlled speed. The Tribunal, on consideration of the oral evidence of P.W.2, coupled with the evidence of R.W.1 and Ex.P.9, fixed the contributory negligence in the ratio of 75% : 25% against the appellant/ Insurance company and the eight respondent herein on appreciation of evidence.

8. I find that there is more variation in the evidence and pleadings, so also, I find that the stand of the Insurance Company as could be reflected in the counter before the Tribunal and so also, found it is to be in variance with the oral evidence of R.W.1 and hence, the Tribunal has rightly come to the conclusion by relying upon Ex.P9, charge sheet filed by the Police and taking into consideration the oral evidence of P.W.2 and the answer elicited in the cross examination, coupled with the answer elicited in the cross examination of R.W.1.

9. I am of the view that the appellant/Insurance company of the insured vehicle and driver is at fault to the extent of 70% and the other vehicle is at fault to the extent of 30%. Accordingly, C.M.A. is partly allowed and the ratio of 75% : 25% stands modified as 70% : 30%.

10. The quantum of compensation awarded by the Tribunal appears to be just and fair and quantum of compensation awarded by the Tribunal is hereby confirmed. The respective Insurance companies are required to pay the award amount at the approportioned percentage of 70% : 30% .

The appellant/Insurance company and the 8th respondent shall deposit the award amount as approportioned by this Court within a period of eight weeks from the date of receipt of a copy of this Judgment. Consequently connected C.M.P. is closed. No costs.

24.02.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
dsn

To

The learned Special District Judge,
Motor Accident Claims Tribunal,
Special District Court,
Dharmapuri.

RMT.TEEKAA RAMAN.J,

dsn

C.M.A.No.2909 of 2022

24.02.2023