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C.M.A.No.2151 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.09.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2151 of 2023
and C.M.P.No.20799 of 2023

United India Insurance Co., Ltd.,
No.76, ROC Road, 1st Floor,
P.B.No.28, Karaikudi.

... Appellant

Vs.

1.Velumani

2.Minor Vijay

3.Minor Vidhya

(Minors are represented by their guardian, mother Velumani)

4.M.Nagaraj

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.02.2013 in MACT.OP.No.132 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Udumalpet.

For Appellant : Ms.I.Malar

For Respondents : Mr.B.Kumarasamy for R1 to R3

No appearance for R4



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C.M.A.No.2151 of 20



JUDGMENT

The Insurance Company has preferred the instant appeal challenging the quantum of compensation awarded by the Tribunal.

2. The respondents 1 to 3 filed a claim petition stating that on 02.12.2011, when the deceased was travelling as a pillion rider; the rider of the two wheeler drove the same in a rash and negligent manner and dashed against a stone, as a result of which the the deceased sustained fatal injuries.

3. The fourth respondent, the rider of the offending vehicle remained *ex-parte* before the Tribunal.

4. The appellant/Insurance Company resisted the claim petition stating that the accident did not take place due to the rash and negligent act of the rider of the vehicle insured with the appellant; and that in any case, the compensation claimed by the respondents 1 to 3 was excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the respondents 1 to 3 examined P.W.1 and P.W.2 and marked seven documents as Exs.P1 to P7. On the side of the



appellant/Insurance Company one witness was examined as R.W.1 and one document was marked as Ex.R1.

6. The Tribunal, after considering the pleadings, oral and documentary evidence held that the accident took place only due to the rash and negligent act of the rider of the two wheeler and directed the appellant being the insurer of the two wheeler to pay a sum of Rs.11,25,000/- as compensation to the respondents 1 to 3. Aggrieved over the said award, the appellant/Insurance Company has preferred the instant appeal.

7. The learned counsel for the appellant/Insurance Company submitted that the respondents 1 to 3 had neither established the avocation nor the income of the deceased. However, the Tribunal had fixed the monthly notional income of Rs.9,000/-, which is on the higher side; and that the rider of the two wheeler did not have a valid driving license and hence, the appellant is not liable to pay the compensation.

8. The Learned counsel for the appellant/Insurance Company submitted that the fourth respondent remained *ex-parte* before the Tribunal and therefore, requested this Court to dispense with the notice to the fourth respondent and had also made an endorsement to that effect in the Court bundle. Hence, notice to the second respondent is dispensed with.



9. Per contra, the learned counsel for the respondents 1 to 3 submitted that the compensation awarded by the Tribunal is just and reasonable and therefore, does not call for any interference. Hence, he prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the respondents 1 to 3 and perused all the materials available on record before this Court.

11. It is seen from the award of the Tribunal that the accident took place in the year 2011. The respondents 1 to 3 had examined P.W.1 and P.W.2 to prove the manner of the accident, the avocation and the income of the deceased. Though, the appellant/Insurance Company claim that the rider of the offending vehicle did not have a valid insurance policy, they have not established the said fact before the Tribunal. That apart, considering the fact that the Tribunal had fixed a meagre sum of Rs.9,000/- including future prospects, this Court is of the view that no interference is called for in the award of the compensation of the Tribunal. Hence, the appeal is liable to be dismissed.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.11,25,000/- awarded by the Tribunal as compensation to the



respondents 1 to 3 along with interest and costs is confirmed. The appellant/ Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit, the respondent No.1 is permitted to withdraw their share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The shares of the minors/2nd and 3rd respondents is directed to be deposited in any one of the Nationalized Bank, till they attain majority. The 1st respondent being the mother of the 2nd and 3rd respondents is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs. Consequently, connected miscellaneous petition is closed.

15.09.2023

Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No
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C.M.A.No.2151 of 20



To

- 1.The Sub Court,
Motor Accident Claims Tribunal,
Udumalpet.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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SUNDER MOHAN,J.

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