THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM :

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

C.M.A.No.173 of 2020
and
C.M.P.No.1366 of 2020

Shriram General Insurance Co.Ltd.,
1st Floor, Plot No.5,
Ramachandran Street, Saravanan Nagar,
Seevaram, Perungudi,
Chennai. ... Appellant

Vs.

1. Kannan
2. Minor Anushka
(Minor 2nd respondent herein is represented by her next friend 1st respondent Kannan)
3. Sakthivel
4. Ezhilarasi
5. National Insurance Co.Ltd.,
Divisional Office, Jawaharlal Nehru Street,
Pondicherry. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 5th day of June 2018 made in M.C.O.P.No.10 of 2015 on the file of Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

For Appellant	:	Mr.S.Dhakshnamoorthy
For Respondents	:	No Appearance [R1, R2 & R4]
		Not Ready in Notice [R3]

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JUDGMENT

This appeal has been filed to set aside the decree and judgement dated 5th day of June 2018 made in M.C.O.P.No.10 of 2015 on the file of Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.

2. Though the notice was served on respondents 1, 2 and 4, none appeared on their behalf, however considering the pendency of the period of the appeal, this Court is inclined to dispose of the same based on the materials available on record.

3. It is the case of the claimants that on 04.05.2014 at about 11:30 hours when the deceased was travelling in the vehicle bearing registration No.TN 37 CE 8187, the lorry bearing registration No.TN 75 4690 driven by the driver of the first respondent in a rash and negligent manner, suddenly stopped the vehicle in the middle of the bridge without any signal and the car in which the deceased was travelling from behind hit the lorry from behind resulting in the death of the deceased. The first respondent's driver's act was wholly negligent which resulted in the death of the deceased. Therefore, the legal heirs of the deceased filed the claim petition claiming compensation for a sum of

Rs.15,00,000/- before the Tribunal.

4. Before the Tribunal the claimants examined P.W.1 and marked 9 documents viz. Exs.P1 to P.9. On the respondents' side they examined R.W.1 and R.W.2 and marked five documents viz. R1 to R5. Upon appreciating the oral and documentary evidence, the Tribunal directed the appellant / insurance company to pay a sum of Rs.13,60,600/- as compensation in favour of the claimants. Challenging the same, the appellant / insurance company has filed the present appeal before this Court.

5. The learned counsel for the appellant submits that the rash and negligent act is on the part of the driver of the vehicle in which the deceased was travelling as could be evidenced by the fact that the car had hit the lorry from behind. Thus, it clearly shows that reckless act is on the part of the driver of the car. Therefore, fastened the liability on the appellant is grossly erroneous and the Tribunal should have fastened the liability only on the insurer of the car namely the fourth respondent. However, without properly adverting to the materials, the Tribunal has fastened the liability on the appellant / insurer of the lorry which requires to be interfered with.

6. Heard the learned counsel for the appellant and the learned counsel appearing for the appellant and perused the materials placed on record.

7. A perusal of the material available on record, more particularly Ex.P1, F.I.R. reveals that while the lorry which was proceeding in front had stopped suddenly and car which was following the lorry from behind had to take evasive action but resultantly dashed against the lorry and in the said accident, the deceased had died. There is no contra material submitted by the appellant herein to show that the negligent act was not on the part of the driver of the lorry. Merely because the car was following from behind the lorry alone cannot be the basis to hold that the driver of the car had negligently hit the lorry. When the documents and other evidences pointed out that the lorry had stopped suddenly which resulted the car dashing against the lorry, the negligent act can only be fastened on the driver of the lorry and not the driver of the car.

8. The insurance companies have not questioned the validity of the insurance policy or the validity of the driving licence held by the drivers of both the vehicles and it is admitted that both the vehicles carry a life insurance policy and the drivers were also possessed of requisite driving licence. Appreciating

the said facts in proper perspective, the Tribunal has fixed the income of the deceased based on the ratio laid down in various decisions and has awarded loss of earning which cannot be said to be erroneous. Therefore, this Court is of the considered view that no interference is required.

9. With the above observation, this appeal is dismissed and the award passed by the Tribunal is confirmed. The appellant insurance company is directed to pay the compensation awarded by the Tribunal in M.C.O.P.No.10 of 2015 within a period of two (2) weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants through RTGS within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed. No costs.

24.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To
1.Motor Accident Claims Tribunal, III Additional District Court, Kallakurichi.
2.The Section Officer,V.R.Section,
High Court, Madras.

M.DHANDAPANI, J.

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