



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.1289 of 2014

AND

M.P.No.1 of 2014

The New India Assurance Company Ltd.,
No.375, Anna Salai, 2nd floor,
Saidapet,
Chennai 600 015.

.. Appellant /2nd respondent

Vs.

1.Sumathi
2.Mari
3. Velmurugan

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.04.2013 made in M.C.O.P.No.188 of 2011 on the file of Motor Accidents Claims Tribunal, (III Additional District Court, Tiruvallur) Poonamallee.

For Appellant : Mr.R.Neethe Perumal

For Respondents : Mr.Varadhakamaraj
(Vakalat not filed)
R1 & R2 – Insufficient address



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 23.04.2013 made in M.C.O.P.No.188 of 2011 on the file of Motor Accidents Claims Tribunal, (III Additional District Court, Tiruvallur) Poonamallee.

2.The appellant is the second respondent in M.C.O.P.No.188 of 2011 on the file of Motor Accidents Claims Tribunal, (III Additional District Court, Tiruvallur) Poonamallee. The respondents 1 and 2 filed the above said claim petition claiming a sum of Rs.8,00,000/- as compensation for the fatal injuries sustained by one Vetrivel in the accident that took place on 19.01.2011.

3. The Tribunal considering the pleadings, oral and documentary evidence has held that the accident occurred only due to the rash and negligent driving of the driver of the car bearing Regn.No.TN-22-D-4602, belonging to the third respondent and directed the appellant/Insurance Company to pay a sum of Rs.5,60,000/- as compensation to the claimants.

4. Challenging the said award dated 23.04.2013 made in



M.C.O.P.No.188 of 2011, the appellant has come out with the present appeal.

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5.The learned counsel appearing for the appellant has contended that the award passed by the Tribunal is contrary to law, against the weight of the evidence and probabilities of the case. He further submitted that the third respondent vehicle was fixed in this case to claim compensation from the appellant / Insurance company. The Tribunal failed to note that a person who is no way connected is shown as eye witness in this case and he is fixing the vehicle. The Tribunal failed to note that in the FIR given by the brother of the victim, it was stated that a car has hit the victim and went without stopping. When the complaint was given, the number of the car is unknown. It has also failed to see that the Accident Register report shows that the cause of the accident was motor cycle driven by the victim got skid and he fell down and suffered grievous injuries. No motor vehicle was involved in the accident. The Tribunal on wrong assumption goes on to find that somebody must have admitted the victim in the hospital and they would have informed that the motor cycle got skid and that cannot be taken into account. It ought to have dismissed the case since the vehicle has been fixed to cheat the insurance company. The amount awarded by the Tribunal under different heads are



excessive and prayed for setting aside the award passed by the Tribunal. He further submitted that the appellant / Insurance Company has deposited 50% of the award amount before the Tribunal.

6. The learned counsel for the respondents/claimants has disputed that the contention by stating that the Tribunal has granted reasonable compensation under various heads. He further submitted that the liability fixed on the part of the Insurance Company is correct. Therefore, it does not call for any interference. Hence the appeal is liable to be dismissed.

7. From the materials available on record, it is seen that the deceased died due to the head injuries sustained by him in the accident which was disclosed by Ex.P2. PW2 has deposed that the offending Sumo car was driven by its driver in a rash and negligent manner at a high speed and dashed against the deceased and thereby caused the said accident. The appellant has summoned Sub-Inspector of Police, Poonamallee, Traffic Wing and examined him as RW1. The copy of AR of the deceased Vetrivel is produced as Ex.R1. Wherein it is recorded as "H/o.RTA; while travelling in a two wheeler got skid and fall". It is pointed out by the appellant that the entry in Ex.R1 regarding



manner of accident and argued that the deceased himself rode the motor cycle negligently and attributed for the accident and third respondent's vehicle driver is no way responsible for the accident. The deceased was unconscious at the time of admission and someone who brought him to the hospital could have given the particulars. Therefore, on the basis of the entries found in Ex.R1 Accident Register copy alone, it cannot be presumed that the deceased was solely responsible for the accident. The deposition of the PW2 has corroborated with the Ex.P1/FIR and Ex.P2/Post mortem certificate. Hence the driver of the offending vehicle is solely responsible for the accident. The third respondent as the owner of the offending vehicle viz., Sumo car is vicariously liable for the tortuous act committed by his driver. Since the appellant is the insurer of the offending vehicle, it is liable to indemnify the insured namely third respondent, since the Insurance Policy of the offending vehicle was alive at the time of accident. Ex.P5 is the copy of the insurance policy. Hence the Tribunal has held that the appellant is liable to pay compensation to the claimants. There is no error in the above finding of the Tribunal warranting interference by this Court.

8. As far as the quantum of compensation is concerned, the contention



of the learned counsel for the appellant is that the Tribunal has awarded an excessive amount of Rs.5,60,000/-. In view of the same, considering all the materials on record in its entirety, the total compensation awarded by the Tribunal is not excessive, warranting interference by this Court.

9. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is hereby confirmed. The Appellant is directed to deposit the balance of the award amount along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of MCOP.No.188 of 2011 on the file of the Motor Accident Claims Tribunal, (III Additional District Court, Thiruvallur, Poonamallee). On such deposit, the Tribunal is directed to transfer the amount to the account of the claimants, within two weeks thereafter. No costs. Consequently, the connected Miscellaneous Petition is closed.

05.06.2023

Index : Yes
Internet : Yes
gv

To



1.The Motor Accident Claims Tribunal
(III Additional District Court, Tiruvallur)
Poonamallee.

2.The Section Officer,
VR Section,
High Court,
Madras.

A.A.NAKKIRAN.,J.

Gv



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