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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.170 of 2019

The United India Insurance Company Limited,
Through its Divisional Manager,
Divisional Office, D.No.1,
Post Office Street,
Palayamkottai,
Tirunelveli – 2. .....Appellant/2nd Respondent

-vs-

1. Arumugathammal
2. Sivamangalamudayar .... Respondents1 and 2 /Petitioners

3. M.Pandiaraj .... Respondent No. 3/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No. 1449 of 2016, dated 20.08.2018, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Tirunelveli.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.S Sankar – for R3

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JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal, III Additional District Court, Tirunelveli, in M.C.O.P.No.1449 of 2016 primarily on the ground of liability.

2. The claimants have contended that the deceased was aged about 61 years. He was working as a Store Keeper in Visvakhsena Construction and earning a sum of Rs.10,000/- (Rupees Ten Thousand only) per month. On 15.09.2016, at about 07.30. p.m, the deceased was travelling as a pillion rider in the vehicle belonging to the first respondent and driven by the first respondent. The first respondent was driving the vehicle in a rash and negligent manner and when he tried to turn the Motor Cycle suddenly, the first respondent and the deceased were thrown away from the motor vehicle. As a result of the same, the deceased Saravanan sustained head grievous injuries and he passed away on the same day at Tirunelveli Medical College Hospital. The claimants have prayed for a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) towards compensation.

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3. The first respondent viz., owner of the vehicle has filed a counter contending that the deceased was travelling as a pillion rider at the time of accident and the vehicle skid on mud road and both the first respondent and the deceased had fallen down. In the said accident, the deceased sustained head injury and he passed away.

4. The Insurance Company had filed a counter contending that the FIR has been lodged by the son of the first respondent. As per said FIR, some unknown motorcycle had come from behind, and at the time of overtaking the bike, the unknown bike hit against this bike and caused the accident. Therefore, it is a case of "hit and run" and hence, the Insurance Company is not liable to pay any compensation.

5. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the Insurance Company has not established the case that some other vehicle was involved in the accident. The Tribunal further found that though the FIR was lodged as against the unknown vehicle, ultimately, in the final report filed by the police authorities, they only implicated the first respondent for the accident. Therefore, the Tribunal found

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that the first respondent alone was responsible for the accident.

6. The Tribunal fixed notional income of the deceased at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) and deducted 1/3 towards personal expenses and applied multiplier of “7” and arrived at a sum of Rs.3,64,000/- (Rupees Three Lakhs and Sixty Four Thousand only) towards loss of income and added a sum of Rs.70,000/- (Rupees Seventy Thousand only) towards conventional heads. A total sum of Rs.4,34,000/- (Rupees Four Lakhs Thirty Four Thousand only) was awarded by the Tribunal. This award is under challenge in the present appeal by the Insurance Company.

7. The learned counsel appearing for the appellant/Insurance Company had contended that the accident has taken place at about 07.30 p.m on 15.09.2016. The first respondent had lodged a police complaint at about 09.00 a.m, on 16.09.2016. In the said complaint, he had stated that some other unknown vehicle had hit against the bike driven by him and in the said accident, the pillion rider had sustained grievous injuries and later died. Therefore, it is clear that the first respondent who is the owner/driver of the vehicle had categorically given a statement before the police that some other unknown vehicle was responsible for the accident. Therefore, he cannot file a

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counter before the Tribunal taking completely different stand that some other vehicle was involved in the said accident. He further contended that the first respondent had colluded with the family of the deceased in order to get compensation from the Insurance Company.

8. The learned counsel appearing for the appellant had further contended that the charge sheet has been laid as against the complainant himself and therefore, they would also establish the fact that the police authority has not done the investigation in a proper manner and they have attempted to help the family of the deceased person suppressing real death.

9. In view of the fact that the accident had happened due to the dashing of the unknown vehicle, the Insurance Company is not liable to pay any compensation. The Tribunal has not properly appreciated the stand taken by the Insurance Company under Ex.R.1- FIR and the evidence of the official of the Insurance Company who was examined as R.W.1. Therefore, according to the learned counsel appearing for the appellant/ Insurance Company, the Insurance Company is liable to be exonerated from the liability and the liability be mulcted on the owner of the vehicle.

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10. Per contra, the learned counsel appearing for the respondents/ claimants had contended that though originally an FIR was registered as against an unknown vehicle, at the instance of the first respondent, after investigation, the police authorities found that the first respondent himself was responsible for the said accident and a charge sheet was also laid as against the first respondent under Ex.P.1. He further contended that in the claim petition, the claimants have specifically contended that the accident had happened only due to the rash and negligent driving of the first respondent. The second claimant was examined as P.W.1 to prove the manner of accident. The claimants also marked Ex.P1- Charge Sheet, which would clearly indicate that the police authorities after investigation found that the driver of the first respondent drove the vehicle in a rash and negligent manner and no other vehicle was involved in the accident. Hence, he prayed for sustaining the award passed by the Tribunal.

11. I have carefully considered the submissions made by the learned counsel on either side.

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12. There is a dispute between the claimants and the Insurance Company with regard to the manner of the accident and involvement of the vehicle.

13. According to the claimants, no other vehicle was involved in the accident and the deceased was travelling as a pillion rider in the vehicle belonging to the first respondent and due to his rash and negligent driving, the deceased fell down and passed away. However, the Insurance Company has relied upon the FIR which was lodged by the first respondent and had contended that another unknown vehicle was responsible for the accident.

14. A perusal of the evidence of R.W.1 clearly indicates that an investigator has been appointed by the Insurance Company. However, the said report has not been placed before this Court. Therefore, the Insurance Company relies upon Ex.R.1-FIR, which is said to have been lodged by the first respondent/ owner of the vehicle. The first respondent under the fear that he would be called upon for the death of the pillion rider, has lodged such a complaint alleging that some unknown vehicle was responsible for the

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accident. However, after investigation, the police authorities have found that no other vehicle was involved in the said accident and they have filed a Charge Sheet as against the first respondent himself on the ground that only due to his rash and negligent driving, the deceased fell down and passed away. When the Insurance Company had relied upon the Ex.R1- FIR the claimants relied upon Ex.P.1- Charge Sheet.

15. When the entire pleadings of the Insurance Company relating to the involvement of the unknown vehicle is only based upon the Ex.R.1-FIR, however, after investigation, a Charge Sheet has been laid as against the complainant himself under Ex.P.1. Therefore, the Tribunal was right in arriving at a finding that the Insurance Company has not established the involvement of an unknown vehicle in the accident.

16. The deceased was aged about 61 years and the Tribunal has rightly fixed the quantum of his monthly income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) and awarded a sum of Rs.3,64,000/- (Rupees Three Lakhs and Sixty Four Thousand only) towards loss of income, and a sum of Rs.70,000/- (Rupees Seventy Thousand only) towards the conventional heads, and totally, Rs.4,34,000/- (Rupees Four Lakhs Thirty Four Thousand only)

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has been awarded. Therefore, this Court does not find any reason to interfere with the quantum of the award.

17. In view of the above said deliberations, this Court does not find any illegality or infirmity in the award passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

21.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accident Claims Tribunal,
III Additional District Court, Tirunelveli.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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