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C.M.A.No.125 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved On : 21.07.2023

Judgement Delivered On : **14.02.2024**

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.125 of 2018

and

C.M.P. No.1665 of 2018

United India Insurance Company Limited,
Motor Third Party Claims Hub,
134, Silinghi Buildings, 4th Floor,
Greens Road, Thousand Lights,
Chennai – 600 006

... Appellant

Versus

1.Chandira
2.A.Makimai Doss
3.A.K.Gopal

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Award and Decree dated 26.04.2017 made in M.C.O.P.No.1772 of 2012 on the file of Motor Accidents Claims Tribunal (IV Judge, Small Causes Court, Chennai).

For Appellant : Mr. A. Dhiraviyanathan

For Respondents : No Appearance (for R1)

: Notice sent returned with endorsement
“No such person” (for R2 and R3)



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JUDGMENT

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The appellant is the Insurance Company, which has been arrayed as third respondent in M.C.O.P.No.1772 of 2012 on the file of the Motor Accident Claims Tribunal, (IV Court of Small Causes), Chennai.

2. The first respondent is the claimant, the second respondent is the owner of the motor-cycle bearing Registration No.TN-20-Z-3100 and the third respondent is the owner of the bus bearing Registration No.TN-21-D-2277.

3. The gist of the case of the claimant before the Tribunal is that, on 10.03.2012 about 18.40 hours, the deceased, T.Janakiraman was travelling as a pillion rider in the motor-cycle bearing TN-20-Z-3100 from Medavakkam to Sozhinganallur towards North to South direction on HCL Company Road. While one Sukumaran, who was the rider of the two wheeler, was proceeding near L&T Company gate, the rider of the motor-cycle, drove the vehicle in a rash and negligent manner and dashed against the stationed bus bearing Registration No.TN-20-T-2277, which was parked in the middle of the road without any rear side indication of parking light. Due to that, the pillion rider suffered multiple injuries and head injury



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and succumbed to the injuries on the same day. The first respondent/claimant is the mother of the deceased. Being a legal heir of the deceased, she filed a claim petition against the Insurance Company/appellant herein, and also against the second and third respondents herein, claiming a sum of Rs.17 Lakhs as compensation.

4. The second and third respondent herein were set ex-parte before the Tribunal.

5. The case of the appellant/Insurance Company as per the counter affidavit filed before the Tribunal is that they denied the manner of the accident and that the accident had only occurred due to rash and negligent riding of the rider of the two wheeler. At the time of accident, the rider of the motor-cycle was possessing only a learner's licence and without having proper licence, he rode the two wheeler and caused the accident, thereby, he violated the mandatory conditions stipulated in the licence, and therefore, the policy taken by the second respondent herein, cannot cover the pillion rider. Therefore, the appellant/Insurance Company is not liable to compensate to the loss caused by the rider of the motor-cycle by law, and the claim is against the policy condition.



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6. In order to substantiate the case of the first respondent/claimant, on the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and ten documents were marked as Ex.P1 to Ex.P10. On the side of the respondents, on behalf of the appellant/ Insurance Company, two witnesses were examined as R.W.1 & R.W.2 and seven documents were marked as Ex.R1 to Ex.R7.

7. Considering the oral and documentary evidence, the Tribunal concluded that the deceased was travelling as a pillion rider at the time of accident and the rider of the motor-cycle, without observing the traffic Rules, dashed behind the stationed bus. The Tribunal fixed the liability on the Insurance Company and awarded a sum of Rs.17,72,890/- as compensation payable by the Insurance Company. The Tribunal held that the appellant/Insurance Company being the insurer of both the vehicles, namely, the bus and the motor-cycle, is liable to pay the compensation to the first respondent/claimant and accordingly, the Tribunal fixed the liability on the appellant/Insurance Company and directed them to pay the compensation of Rs.17,72,890/- to the first respondent/claimant. Challenging the said award passed by the Tribunal, the Insurance Company has filed the present appeal before this Court.



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per month by working as an Assistant-Molding in M/s. Enzotech Solutions Pvt. Ltd., Karapakkam, Chennai, has awarded a sum of Rs.17,72,890/- as compensation, which is over and above the claim made by the claimant. Further, the compensation awarded by the Tribunal under the heads viz., loss of dependency, loss of love and affection and funeral expenses, is highly excessive and the same is liable to be set aside.

10. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials placed on record.

11. A mere perusal of the records reveals that the deceased was travelling in the motor-cycle bearing Registration No.TN-20-Z-3100 as pillion rider from Medavakkam to Solinganallur from North to South direction on the HCL road. One Sukumaran was riding the motorcycle in a rash and negligent manner. While the said Sukumaran was proceeding near L&T company gate, he dashed against the stationed bus bearing Registration TN-20-T-2277, which was parked in the middle of the road without any rear side indication of the light. In the said accident, the pillion rider suffered serious head injury and succumbed to the injuries on the same day.



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12. The core contention of the appellant/Insurance Company is that the first respondent/claimant had not proved the manner of the accident which occurred only due to rash and negligent riding of the rider of the two wheeler, and also the insurance policy was not covered to the pillion rider. The accident was caused by the rider of the two wheeler, who dashed against the stationed bus, and therefore, the Insurance Company is not liable to pay the compensation and the rider of the vehicle is not the owner of the vehicle. Considering the age, avocation and income of the deceased, the Tribunal awarded a sum of Rs.17,72,890/- as compensation and has given more than what she claimed and fixed the liability only on the part of the appellant/Insurance Company, which is totally untenable. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

13. As far as the fixation of liability on the appellant/Insurance Company by the Tribunal, is concerned, the evidence of the eye-witness clearly shows that the bus was stationed on the middle of the road, without any indication, and without observing the road traffic Rules. The rider of the two wheeler was also riding the vehicle without following the traffic Rules in a rash and negligent manner and dashed against the stationed bus.

Therefore, the Tribunal ought to have fixed the negligence on both the driver



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of the bus as well as the rider of the two wheeler, as both the vehicles are offending vehicles, involved in the said accident, and no contra evidence has been produced on behalf of the appellant/Insurance Company, either before the Tribunal or before this Court, to prove that they are not liable to pay the compensation to the claimant. Therefore, this Court confirms the liability fixed by the Tribunal on the appellant/Insurance Company.

14. As far as the quantum of compensation is concerned, the claimant had stated that, at the time of accident, the deceased was aged about 27 years and working as an Assistant-Molding in a private company and earning a sum of Rs.11,050/- per month. As per the salary certificate/Ex.P9 and Ex.P10/Authorization letter issued by the company, the Tribunal rounded off the salary of the deceased as Rs.11,100/-. Since the deceased was aged 27 years, the Tribunal added future prospects at 50%, and a sum of Rs.16,650/- [Rs.11,100 + (Rs.11,100 x 50%)] was taken as monthly income of the deceased. Therefore, a sum of Rs.1,99,800/- (Rs.16,650 x 12) was calculated as annual income of the deceased. As per Ex.P5/Post-Mortem certificate, produced by the claimant, the age of the deceased was 32 years at the time of accident and therefore, the multiplier “16” was applied. After deducting 50% towards personal expenses, the loss



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of dependency was arrived at Rs.15,98,400/- (Rs.1,99,800/- x 16 x 50%).

This Court finds no error in the above calculations, and accordingly, the compensation awarded under the head 'Loss of dependency' is confirmed.

15. Like wise, a sum of Rs.25,000/- awarded for funeral expenses, is also not an excessive one and a sum of Rs.49,490/- awarded under the head of medical expenses, is also based on the medical bills produced by the claimant, which were marked as Ex.P4 series. Therefore, the compensation awarded under the head “Funeral expenses”, “Medical Bills” and “Loss of Love and Affection” are proper and they do not require any interference by this Court and the same are hereby confirmed.

16. Therefore, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

14.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Case Citation : Yes/No

klt

To



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1.The Motor Accidents Claims Tribunal,
(IV Judge, Small Causes Court), Chennai.

2.The Section Officer,
V.R. Section, High Court of Madras.



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P.VELMURUGAN, J.

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Pre-Delivery Judgment in

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