IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

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

CMA.No.597 of 2021
and
CMP.No.3649 of 2021

The Branch Manager,
Bajaj Allianz General Insurance Company Ltd.,
Ragavis Centre, 1st and 2nd Floor,
21-A, Nethaji Nagar, Nanjundapuram, Main Road,
Ramanathapuram, Coimbatore. ...Appellant

Vs.

1. Kasturi
2. Premalatha
3. Saranya
4. Premkumar
5. Kumerasan ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the award and decree dated 07.12.2019 made in MCOP.No.1275 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.V.Kumaravelan, for R1 – R4
: No Appearance, for R5

JUDGMENT

Challenging the award and decree dated 07.12.2019 made in MCOP.No.1275 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri, the appellant has come up with this appeal.

2. It is the case of the respondents 1 to 4/claimants that, on 05.04.2018 at about 06.30 pm., when the deceased Krishnan was proceeding in his cycle from Barugur to Kandhikuppam, at that time a car bearing Regn.No.TN-37-CX-0909 owned and driven by the 5th respondent insured with the appellant-insurance company came in a rash and negligent manner and dashed against the above cycle, due to which, the deceased sustained grievous injuries and succumbed to the same. Thereby, the respondent 1 to 4/claimants filed a claim petition in MCOP.No.1275 of 2018, claiming a compensation of Rs.20,00,000/-. Before the Tribunal, the claimants examined two witnesses viz., P.W.1

and P.W.2 and marked exhibits P.1 to P.15 and on the side of appellant, three witnesses viz. R.W.1 to R.W.3 were examined and exhibits R.1 to R.6 were marked. After trial, the Tribunal, on appreciation of oral and documentary evidence came to the conclusion that the accident had happened only because of the rash and negligent driving on the part of the 5th respondent and awarded a sum of Rs.9,11,900/- towards compensation for the death of the said Krishnan, payable by the appellant / insurance company in favour of the claimants. Aggrieved by the same, the appellant has come up with this appeal.

3. Learned counsel for the appellant/Insurance company submitted that, it is a case of hit and run and the 5th respondent was not at all involved in the accident and the entire case was made up by the police and the claimants and though the police officials have initially registered the FIR only as a hit and run case, later, the police officials and claimants have colluded together and implicated the 5th respondent and the very idea of the claimants was to extract money from the appellant and the 5th respondent and thereby, the appellant cannot be made liable to pay any compensation. However, without considering any of the above said facts,

the tribunal had saddled the payment of compensation on the appellant-insurer, which is wholly unsustainable. Learned counsel for the appellant further contended that, there was no eyewitness to the accident and two witnesses who were stated to be ocular witnesses were indeed inquest witnesses and without any proper eye witness to establish the reckless driving on the part of the 5th respondent, the tribunal, had held that the accident had happened solely due to the rash and negligent driving on the part of the 5th respondent and directed the appellant-insurance company to pay the compensation in favour of the claimants, which is not sustainable. Further, the compensation awarded by the tribunal under the various heads is also on the higher side, which must be necessarily interfered with. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel for the respondents 1 to 4/ claimants submitted that there is no error or illegality in the award passed by a tribunal and by considering all the relevant documents, the Tribunal passed the present impugned award. Further, the quantum of compensation awarded by the tribunal is already on the lower side and the same does not require further reduction. Accordingly, he prayed for

dismissal of the appeal.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. The major contention of the learned counsel for the appellant-Insurance Company is that, the entire case is a fabricated one and that the 5th respondent was falsely implicated in this case and that the contradiction in the contents of the FIR which has been marked as Ex.P1 and the depositions of the claimants' side witnesses has not been properly considered by the tribunal.

7. It has been the consistent ratio laid down by the Courts that the FIR is not a substantive document and it has to be substantiated by acceptable positive legal evidence and whatever is spoken in the FIR need not be taken at its face value and when the individual eye witness examined as P.W.2 clearly deposed the manner in which the accident had happened and stated that the accident had happened solely due to the rash

and negligent driving on the part of the driver of the appellant insured vehicle/the 5th respondent, the deposition would survive over and above the FIR.

8. Therefore, when the ocular testimony has clearly pointed the finger on the 5th respondent for rash and negligent driving, the mere fact that there is a contradiction in the contents of the FIR and the deposition of the claimants' side witnesses alone cannot be the basis to disregard the negligence attributed to the 5th respondent.

9. Further, though, it is proved through cogent and convincing oral evidence in the form of P.W.2, no contra evidence has been adduced by the appellant-Insurance Company in order to disprove the case of the claimants. In the absence of any contra evidence, the Tribunal, after considering the oral and documentary evidences, has rightly fixed the negligence on the part of the 5th respondent/driver of the appellant insured vehicle and the said findings of the Tribunal cannot be interfered with.

10. With regard to quantum of compensation, it is the claim of the

appellant that the compensation awarded by the Tribunal is highly excessive which requires reconsideration. In this regard, this Court perused the impugned award passed by the Tribunal and upon perusal of the impugned award, this Court is of the view that, by no stretch the compensation awarded in the appeal could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal stands dismissed, confirming the impugned award dated 07.12.2019 passed by the Tribunal in MCOP.No.1275 of 2018 and the Appellant-Insurance company is directed to deposit the compensation of Rs.9,11,900/- awarded by the tribunal to the credit of MCOP.No.1275 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the

Tribunal is directed to transfer the said amount to the respondents 1 to 4/

claimants directly to their bank accounts through RTGS within a period of two (2) weeks thereafter, as per the apportionment made by the tribunal. There shall be no order as to costs in this appeal. Consequently, the connected Miscellaneous petition is closed.

03.12.2024

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

1. The Motor Accidents Claims Tribunal,
   Special District Court,
   Krishnagiri.

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

M.DHANDAPANI, J.

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