IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM :

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

C.M.A.No.1226 of 2020
and
C.M.P.No.7954 of 2020

M/s.Royal Sundaram Alliance Insurance
Company Ltd., D.No.4A, 4th Floor, Tirumalai Towers,
No.723, Avinashi Road, Coimbatore – 641 018 and
having Regd. Office at No.21, Patullos Road,
Chennai – 600 002. ... Appellant

Vs.

1. Vedhanayagi
2. A.P.Rajendran
3. P.Munirathinam
4. K.Vijaya ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 6th day of June, 2018, made in M.C.O.P.No.458 of 2014 on the file of Motor Accident Claims Tribunal (Special Sub Court), Coimbatore.

For Appellant : Mr.K.Vinod

For Respondents : M/s.Gomathi for M/s.S.S.Swaminathan for R1 and R2
No appearance for R3 and R4

JUDGMENT

The above appeal is filed by the appellant/insurance company against the Judgment and Decree dated 06.06.2018 passed in M.C.O.P.No.458 of 2014 by the Motor Accident Claims Tribunal (Special Sub Court), Coimbatore.

2. Though the notice was served on respondents 3 and 4, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

3. It is the case of the claimants that, on 01.11.2012 when the deceased namely Sabari Ganesh was riding his motor cycle bearing Regn.No.TN 37 BF 6784, at that time a lorry bearing Regn.No.TN 52 9274 driven by the third respondent insured with the appellant / insurance company, belonging to the fourth respondent overtook the motor cycle driven by the deceased and while proceeding in front of the motor cycle, the driver of the lorry without lighting any indicator had

applied sudden brake, due to which the deceased dashed the rear side of the lorry and sustained grievous injuries and succumbed to the same. Therefore, the claimants / respondents 1 and 2 who are the parents of the deceased have filed a claim petition claiming a sum of Rs.20,00,000/- for the death of the deceased.

4. Before the Tribunal, the claimants had examined P.W.1 and P.W.2 marked Exhibits P.1 to Ex.P.4. On the side of the appellant / insurance company they eamined R.W.1 and marked Ex.R1 to R5. After adjudication, the Tribunal awarded a sum of Rs.11,64,000/- as compensation to the claimants / respondents 1 and 2. Challenging the same, the appellant / insurer of the lorry has preferred the present appeal as against the liability fixed as against them.

5. The learned counsel appearing for the appellant / insurance company submitted that, though the F.I.R has been registered against the driver of the lorry, however, FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and no further. While so, the mere fact that the FIR has been

lodged against the driver of the appellant's insured vehicle alone cannot be the basis to attribute rash and negligent driving on the driver of the appellant's insured vehicle. Admittedly, the deceased had driven the two wheeler in an uncontrollable speed and dashed the lorry which was proceeding in front of the motor cycle, however, without considering the said aspect, the Tribunal had fastened the entire liability on the part of the appellant / insurer of the lorry which is wholly unsustainable.

6. Per contra the learned counsel for the respondents 1 and 2 / claimants submit that admittedly the deceased was riding his two wheeler in a moderate speed, however, without lighting any indicator, the driver of the lorry / third respondent had applied sudden brake, due to which the deceased dashed the said lorry, which cannot be said to be negligible on the part of the deceased. In order to prove the negligence on the part of the driver of the lorry and the manner in which the accident had happened, the claimants examined P.W.2, eye witness, which also corroborates with Ex.P.1, F.I.R, however, in order to disprove the contents of the FIR and P.W.2, no independent eye witness has been examined by the appellant. In the absence of any contra evidence to

prove the same, the Tribunal on the basis of the FIR and the deposition of P.W.2, had arrived at a conclusion that the driver of the lorry is negligible and fixed the entire liability as against the appellant / insurer of the lorry which does not warrant interference.

7. Heard the learned counsel appearing for the appellant and the learned counsel for the respondents 1 and 2 and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. Admittedly the accident happened on 01.11.2012. In order to prove the manner in which the accident had happened, the claimant has examined an independent eye witness as P.W.2. who categorically deposed before the Tribunal that the accident had occurred solely due to the driver of the lorry / third respondent. However, in order to disprove the same, no independent eye witness has been examined on behalf of the appellant / insurer of the lorry.

9. On the aspect of negligence, based on the oral testimony of P.W.2 (V.Ramakrishnan) eye witness, coupled with the charge sheet laid against the driver of the lorry and other connected exhibits marked on the side of the claimants, concluded that the accident occurred only due to the rash and negligent driving of the driver of the lorry by fixing the entire liability as against the appellant / insurance company, which, in the opinion of this Court, is based on sound reasoning and hence, does not warrant interference.

10. However, since, giving under one head and reducing under the other head would result in the amount to be awarded to be the same and no useful purpose would be served in modifying the compensation under the heads, while the compensation amount would remain the same, which would be nothing but an exercise in futility, therefore, this Court is not embarking upon the said modification, but suffice to confirm the compensation awarded by the Tribunal.

11. For the reasons aforesaid, this Appeal stands dismissed, confirming the award passed by the tribunal in MCOP.No.458 of 2014

dated 06.06.2018 and the appellant / insurance company is directed to deposit the compensation of **Rs.11,64,000/-** awarded by the tribunal to the credit of MCOP.No.458 of 2014 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 six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the respondents 1 and 2 directly to his bank account through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

15.11.2024

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

1. Motor Accident Claims Tribunal (Special Sub Court), Coimbatore.

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

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