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C.M.A.Nos.3420 & 3423 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.3420 & 3423 of 2021

and

C.M.P.Nos.19741 & 19757 of 2021

M/s.United India Insurance Company Limited,
Branch Office III. 137-D,
Cherry Road, Salem -1.

... Appellant in
C.M.A.No.3420 of 2021

M/s.United India Insurance Company Limited,
Divisional Office II.,
104-A, Peramanur Main road,
Salem -636 007.

... Appellant in
C.M.A.No.3423 of 2021

vs.

1. K.S.Prakash
2. K.P.Sumathi
3. T.V.Senthilkumar

... Respondents
C.M.A.No.3420 of 2021

1. N.S.Sounther
2. T.V.Senthilkumar

... Respondents
C.M.A.No.3423 of 2021

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 22.12.2017 in M.C.O.P.195/2012 and M.C.O.P.543/2012 on the file of the Motor Accident Claims Tribunal, Special District Court, Salem.

In both C.M.As

For Appellant : Mrs.I.Malar

For Respondents : No appearance

COMMON JUDGMENT



C.M.A.Nos.3420 & 3423 of 2021

Questioning the negligence fastened on the part of the driver of the bus bearing Registration number TN 30 AA 4699 by the Tribunal in M.C.O.P.195/2012 and M.C.O.P.543/2012, the present appeals are filed by the appellant, the United India Insurance Company Limited, Salem.

2. The respondents/claimants in both these appeals filed claim petitions in M.C.O.P.195/2012 and M.C.O.P.543/2012, under Section 166 of the Motor Vehicles Act, before the Motor Accident Claims Tribunal, Special District Court, Salem seeking compensation of Rs.25,00,000/- for the death of one Dinesh (son of the claimants) and Rs.10,00,000/- for the injuries sustained by one Sounther in a road accident that occurred on 07.01.2012.

3. The brief case of the claimants is as follows :

On 07.01.2012, Dinesh (deceased) was riding a two wheeler bearing Registration number TN 24 F 3314 with one Sounther as pillion rider on Salem Junction road and at about 10.00 p.m., a speeding private bus bearing Registration number TN 30 AA 4699 hit the two wheeler, as a result of which, Dinesh died on spot. The pillion rider Sounther sustained injuries all over his body and was immediately rushed to Hospital.



4. According to the claimants, the rash and negligent driving of the driver of the bus bearing Registration number TN 30 AA 4699 was the cause of the accident and that since the owner of the bus had insured his vehicle with the appellant, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the owner of the bus remained absent and was set *ex parte*. The appellant, Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

6. The Tribunal after analysing the evidence on record, fastened negligence on the part of the rider of the bus bearing Registration Number TN 30 AA 4699 and directed the appellant Insurance Company to pay compensation of Rs.7,10,400/- to the claimants in M.C.O.P.195/2012 and a sum of Rs.3,77,325/- to the claimant in M.C.O.P.543/2012, together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 22.12.2017. The Tribunal also held that the liability of the owner of the bus and the insurer is joint and



several.

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7. Questioning negligence fastened on the part of the driver of the bus, the present appeal is filed by the appellant / the United India Insurance Company Limited under Section 173 of the Motor Vehicles Act.

8. Heard Mrs.I.Malar, learned counsel for the appellant, Insurance Company.

9. Though notice was served on the respondents and their names are also printed in the cause list, there is no representation on their behalf.

10. Mrs.I.Malar, learned counsel for the appellant / Insurance Company contended that Dinesh (deceased) was a minor and was not having a valid driving licence on the date of accident. Therefore, the Tribunal was wrong in fastening negligence on the part of the driver of the bus bearing Registration number TN 30 AA 4699. She therefore prayed for setting aside the order of the Tribunal.

11. In the instant case, the pillion rider Sounther was examined



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as P.W.2 and his evidence is clear as to the rash and negligent driving of the driver of the bus. Nothing useful was suggested to him during the course of cross examination to discredit or disbelieve his version. There is nothing on record to show that Dinesh also contributed to the accident. Merely because he was a minor on the date of accident, the entire negligence cannot be fastened on his part. In the circumstances, I do not see any reason to interfere with the orders passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeals are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

18.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes / No
vum

R.HEMALATHA, J.

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To

- 1.The Motor Accident Claims Tribunal,
Special District Court,
Salem.
2. The Section Officer, VR Section,
Madras High Court, Chennai.



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