BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.01.2024**

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.415 of 2013
and
M.P.(MD)No.1 of 2013

The Branch Manager,
The Oriental Insurance Company Limited,
Cantonment, Trichy. ...Appellant

Vs.

1.Jeeva

2.Jayamani

3.Alupponnu

4.A.Satyabama

5.Kumaravelu ...Respondents

PRAYER: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decreetal award dated 28.12.2005 in MCOP No.2094 of 2000 on the file of the Motor Accidents Claims Tribunal / II Additional Subordinate Court, Tiruchirappalli.

For Appellant : Ms.U.Sri Rubha
for M/s.C.Jawahar Ravindran

For Respondents : Batta due (R1 to R3)
Dismissed against R4 vide order 26.06.2018
No appearance (R5)

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the order dated 28.12.2005 passed in MCOP No.2094 of 2000 on the file of the Motor Accidents Claims Tribunal / II Additional Subordinate Court, Tiruchirappalli, wherein the respondents 1 to 3 herein and one Vellakkannu have filed the claim petition for the death of one Cauvery.

2. The claim petition has been filed before the tribunal stating that on 07.01.2000 at about 12.45 hours, when the deceased Cauvery was walking on Trichy – Pudukkottai main road, infront of TVS Parcel Office at Subramaniyapuram, the driver of the fourth respondent herein drove the Ambassador car bearing registration no.TMW 2775 in a rash and negligent manner and dashed against the deceased Cauvery, due to which she sustained multiple injuries all over the body and was taken to Government hospital, Tiruchirappalli, where she died on 17.01.2000. The occurrence took place due to rash and negligent driving of the car driver. The car of the fourth respondent was insured with the appellant insurance company. The deceased was earning a sum of Rs.75/- per day and she was the breadwinner of the family and hence, the claimants being husband and daughters of the deceased sought for compensation amount of Rs. 2,50,000/-.

3. The appellant insurance company filed a counter before the tribunal stating that the claim petition is not maintainable. The accident was not taken place due to rash and negligent driving of the car driver. Infact, the deceased without minding the vehicle suddenly crossed the road and thereby invited the accident. Hence, the appellant insurance company is not liable to pay any compensation to the claimants. The appellant insurance company also denied the age, income and occupation of the deceased.

4. In order to prove the case of the claimants, before the Tribunal, PW.1 was examined and Exs.P1 to P4 documents were marked and on the side of the appellant insurance company, neither any witness was examined nor any documents were marked.

5. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.2,18,000/- towards compensation with interest at 7.5% per annum. Aggrieved over the award of compensation passed by the Tribunal, the appellant insurance company has preferred the present Civil Miscellaneous Appeal on the ground that the negligence is not on the part of the car driver and the deceased suddenly crossed the road and thereby invited the accident. Therefore, the insurance company is not liable to pay any compensation to the claimants.

6. The learned counsel appearing for the appellant would contend that the accident was occurred due to negligence on the part of the deceased and the driver of the car is noway responsible for the accident. Without considering the same, the tribunal has fixed the liability on the appellant insurance company and awarded compensation to the claimants. Therefore, the award passed by the tribunal is liable to be set aside.

7. Heard the learned counsel appearing for the appellant insurance company. There was no representation for the respondents. For R1 to R3, batta was not paid. As against R4, already the petition was dismissed and none appeared on behalf of R5.

8. After hearing on the side of the appellant and upon perusing the documents including the order of the Tribunal by this Court, the point for determination in this appeal is whether the appeal has to be allowed or not.

9. In this case, the respondents 1 to 3 / petitioners / claimants have filed the claim petition for the death of one Cauvery stating that the accident took place due to rash and negligent driving of the car driver and the car was owned by the fourth respondent and insured with the appellant insurance company, and the Tribunal awarded a sum of Rs.2,18,000/- towards compensation to the respondents 1 to 3 / petitioners.

10. The appellant preferred this appeal on the ground that negligence is on the part of the deceased. According to the appellant, the deceased had suddenly crossed the road without minding the car and thereby invited the accident and hence, the appellant insurance company is not liable to pay any compensation to the claimants.

11. According to the claimants, the accident took place due to rash and negligent driving of the car driver. To prove the negligence on the part of the car driver, PW1 was examined and PW1 also deposed about the manner of accident and according to PW1, the accident took place due to rash and negligent driving of the car driver. On the side of the appellant insurance company, neither witness was examined nor document was marked. In the absence of contra evidence to the petitioner side, the evidence adduced by the petitioner side are reliable and acceptable. Therefore, the respondents 1 to 3 / petitioners proved the negligence on the part of the car driver of the fourth respondent herein. The appellant insurance company failed to prove their contention.

12. This Court perused the records carefully, which reveal that in order to substantiate the case of the appellant insurance company, before the tribunal, they have not examined any witness and not filed any documents and they have miserably failed to prove their contention. The claimants have adduced sufficient evidence to prove that the accident took place due to rash and negligent driving of the car driver.

13. The tribunal after evaluating the oral and documentary evidence, rightly concluded that the accident took place due to the rash and negligent driving of the car driver and awarded the compensation. As far as the quantum of award is concerned, there is no dispute with regard to the quantum of compensation, and the Tribunal awarded a sum of Rs.2,18,000/- with interest at the rate of 7.5% per annum and the same is reasonable. Therefore, as discussed supra, this Court is of the opinion that the appellant insurance company has failed to prove their case and this appeal has no merits and deserves to be dismissed. Accordingly, this civil miscellaneous appeal is dismissed. The order dated 28.12.2005 passed by the Motor Accidents Claims Tribunal / II Additional Subordinate Court, Tiruchirappalli in MCOP No.2094 of 2000 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

05.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No

P. DHANABAL, J.

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TO:-

1.The Motor Accidents Claims Tribunal /
II Additional Subordinate Court,
Tiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
C.M.A.(MD)No.415 of 2013

Dated:
05.01.2024