BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.959 of 2017

S.Lakshmana Perumal ... Appellant/1st Respondent

-vs-

1. M.Pushpam

2. A.Amudha

3. A.Arulraj ... Respondents 1 to 3/ Petitioners/Claimants 1 to 3

4. The Branch Manager,
M/s. Oriental Insurance Company Limited,
No.6A, North Cotton Road,
Tuticorin. ... 4th Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.343 of 2013, on the file of the Motor Accident Claims Tribunal (Principal District Court), Thoothukudi, dated 11.06.2015.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.S.M.Mohan Gandhi – for R1 to R3
: Mr.C.Jawahar Ravindran – for R4

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the owner of the motor vehicle, challenging the mulcting of liability upon them in M.C.O.P.No.343 of 2013, on the file of the Motor Accident Claims Tribunal (Principal District Court), Thoothukudi.

2. According to the claimants, while the deceased was walking on the road, on 25.05.2013, a two wheeler owned by the first respondent and alleged to have been insured with the second respondent was driven in a rash and negligent manner and dashed against the victim. He sustained grievous injuries and later, passed away. The claimants sought for compensation of Rs. 20,00,000/- (Rupees Twenty Lakhs only).

3. The owner of the vehicle has filed a counter contending that the vehicle was insured with the second respondent and they are liable to pay the compensation. The first respondent was also disputing the manner of accident.

4. The Insurance Company has filed a counter contending that the policy of the vehicle was not subsisting at the time of the accident and hence they are not liable to pay any compensation.

5. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the first respondent on the date of the accident. The vehicle was not insured with the second respondent. The Tribunal further found that the first respondent was not having a valid driving license on the date of accident. Thereafter, the Tribunal has proceeded to fix the quantum of award at Rs.4,31,000/- (Rupees Four Lakhs and Thirty One Thousand only). Challenging the said award, the present appeal has been filed by the owner of the vehicle.

6. According to the learned counsel appearing for the appellant, the accident has taken place only due to the negligence on the part of the pedestrian. He has further prayed that only an order of pay and recovery should have been passed by the Tribunal. He has further contended that the award of the Tribunal is on the higher side and hence, it has to be modified.

7. Per contra, the learned counsel appearing for the respondents 1 to 3/ claimants had contended that the Tribunal has specifically found that the accident has taken place only due to the negligence on the part of the driver of the first respondent. Further, the quantum of award is reasonable and does not called for any interference.

8. The learned counsel appearing for the fourth respondent/Insurance Company pointed out that the Insurance Policy was not in subsistence on the date of the accident and hence, he prayed for exoneration of Insurance Company may be upheld.

9. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

10. As it could be seen from the submission of either parties, while the deceased was walking as a pedestrian on the road, the two wheeler driven by the first respondent had dashed against the victim and he had sustained grievous injuries and later, passed away. The first respondent is the owner/driver of the vehicle has not chosen to file his driving license.

11. A perusal of Ex.P3 indicates that the driving license in favour of the first respondent had expired on 03.06.2012, one year to the date of accident. A perusal of the policy of the first respondent vehicle, which is marked as Ex.P2, reveals that the policy had expired on 29.07.2010 itself and thereafter, the insurance policy has not been renewed. Therefore, it is clear that the Tribunal was right in mulcting the liability upon the owner of the vehicle namely, the appellant/first respondent herein.

12. According to the claimants, the Tribunal has fixed the monthly notional income at Rs.4,000/- (Rupees Four Thousand only) per month and deducted 1/4th towards personal expenses and applied the multiplier of "11" and has arrived at a sum of Rs.3,96,000/- towards loss of income, a sum of Rs.10,000/- has been awarded towards loss of consortium to the first claimant and other claimants have been awarded each sum of Rs.10,000/- towards loss of love and affection and a sum of Rs.5,000/- has been awarded towards funeral expenses. In total, a sum of Rs.4,31,000/- has been awarded. This Court does not find any reason to interfere in the quantum of award and the award of the Tribunal is confirmed.

13. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

25.07.2024

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

1. The Motor Accident Claims Tribunal,
   (Principal District Court),
   Thoothukudi.

2. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai.

R.VIJAYAKUMAR,J.

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