IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. No. 27 of 2015
&
M.P. No. 1 of 2015

United India Insurance Co. Ltd.,
Insurer Code (100 804),
PB No. 29, 2nd Floor,
Nithyananda (LIC) Bldg.,
Kottaherry,Kanhangad - 671 315. ..Appellant/2nd Respondent

Vs.

1. Tmt. Anjalakshmi
2. Tmt. K. Savithiri
3. K. Nivetha (minor)

(rep. By her natural guardian and mother,
the 2nd petitioner)

4. M.S. Hakkim ..Respondents/ Petitioners/ 1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 04.08.2014 passed in O.P. No. 2422 of 2011 by the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

For Appellant :: Mr.D. Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs.13,23,000/- for the death of one Kamaraj, aged about 45 years, working as an Electrician and earning about Rs.10,000/- per month, in the accident, which occurred on 03.06.2010, when he was standing behind a TATA Mini Van, on the road margin, to load some cement bags and a TATA SUMO car, belonging to the 4th respondent herein and insured with the appellant, driven rashly and negligently, hit the said van, causing grievous injuries to the said Kamaraj, resulting in his death.

2. Heard Mr.P. Bhaskaran, learned counsel for the appellant.

3. Though the learned counsel for the appellant would submit that the TATA Mini Van was parked on the wrong side of the road, the Tribunal erred in holding that the vehicle insured with the appellant Insurance Company, namely, TATA SUMO car was responsible for the accident.

4. However, a perusal of the records would show that though such a plea was taken in paragraph No.4 of the counter statement, nothing has been established by the appellant that the parking of the vehicle on the wrong side of the road attributed to the accident. The Tribunal, relying upon the judgment of the Honourable Apex Court, rendered in Ravi Kapur V. State of Rajasthan (2012 (9) SCC 284), held that the driver of the offending vehicle should have taken care to see that he does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. Since the driver of the offending vehicle did not take care while driving and contributed to the accident, the Tribunal, rightly fastened the liability on the driver of the offending vehicle. Moreover, the driver remained ex parte. No contra evidence was adduced by the Insurance Company to prove the stand taken by them. In such circumstances, the finding rendered by the Tribunal regarding negligence cannot be interfered with.

5. As far as quantum is concerned, eventhough Rs.10,000/- was claimed to be the monthly income of the deceased, the Tribunal rightly took Rs.6500/- as the monthly income, following the judgment of the Honourable Apex Court rendered in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627 and added 50% towards “Future Prospects” following the decision of the Honourable Apex Court in Sarla Verma and Others V. Delhi Transport Corportion and another (2009 (6) SCC 121). The addition of 50% towards “Future Prospects” by the Tribunal is justified considering the overall amount granted by the Tribunal as compensation. The Tribunal also made deduction towards income-tax. Further, the sum of Rs.5000/- awarded towards “Transportation Expenses”, Rs.25,000/- awarded towards “Funeral Expenses” Rs. 1 lakh awarded to the daughter and mother of the deceased towards “Loss of love and affection & Mental Agony” and Rs. 1 lakh awarded towards “Loss of Consortium” to the 2^{nd} respondent/wife of the deceased are in consonance with the dictum laid down by the Honourable Apex Court and they stand confirmed. The Medical Expenses incurred to the tune of Rs.680/-, as per Ex-P8, which has been allowed and rounded off to Rs.1000/- by the Tribunal is also confirmed. Hence, the award of Rs.13,23,000/- along with interest @ 7.5% per annum stands confirmed.

6. The appellant Insurance Company is directed to deposit the entire award amount, with accrued interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, respondents 1 and 2 are permitted to withdraw their respective shares, as per the ratio fixed by the Tribunal. The minor's share shall be deposited in interest bearing Fixed Deposit in the Indian Bank, High Court Branch, Chennai, till she attains majority. The 2nd respondent is permitted to withdraw interest accruing on such deposit once in three months.

7. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Connected M.P. Is closed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

nv

To

The MACT (VI Judge, SCC), Chennai.

1 cc to mr.D. Bhaskaran, Sr. 5946

C.M.A. No. 27 of 2015

TEJ (CO)
kk 2/3