IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2016

Coram:-

The Hon'ble Mr. Justice M.DURAISWAMY
and
The Hon'ble Mr.Justice R.SURESH KUMAR

C.M.A.No.500 of 2012

National Insurance Co. Ltd.,
Divisinal Office,
No.19, Officers Line
Vellore ... Appellant /2nd Respondent

vs.

1.E.Amirthalakshmi
2.M.P.Ekambaram
3.Minor Mothinath
(Minor represented by mother
and Guardian, the 1st respondent)..Respondents 1 to 3/
Petitioners
4.Harrind Singh Bajwa ..4th Respondent/1st Respondent

C.M.A. filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 24.12.2007 made in M.C.O.P.No.78 of 2006 on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Court/Fast Track Court No.II), Ranipet.

For Appellant : Mr.D.Baskaran

For Respondents 1 & 2 : Mr.R.Ramesh

R3 : Minor rep. By R1
R4 : Not ready in notice

J U D G M E N T
(Judgement of the court was delivered by M.DURAISWAMY, J.,)

Challenging the award dated 24.12.2007 passed in M.C.O.P.No.78 of 2006 on the file of the Motor Accident Claims Tribunal, (hereinafter referred to as “the Tribunal”), Additional

District and Sessions Court/Fast Track Court No.II, Ranipet, the Insurance Company has filed the above appeal.

2. The parents and brother of the deceased M.G.Goverthanan have filed a claim petition in M.C.O.P.No373 of 2002 before the Subordinate Court, Ranipet (M.C.O.P.No.78 of 2006) claiming a total compensation of a sum of Rs.50 lakhs for the death of the said M.G.Goverthanan in a road accident that had occurred on 02.11.2002.

3.1 On 02.11.2002 at about 3.30 p.m., the deceased was travelling as a Passenger in a Toyoto Qualis Car bearing Reg.No.DL 3/CV-9727 from New Delhi to Kullu-Manali. When the vehicle was approaching Himachal Pradesh State, Mandi District, the vehicle dashed against a parked Truck, as a result, the accident had occurred. The said M.G.Goverthanan had died on the spot.

3.2 At the time of the accident, the deceased was aged 23 years and he was a graduate in B.E. (Computer Science) and was working as a Software Engineer in New Delhi. According to the claimants, the deceased was earning a sum of Rs.33,000/- per month. The 1st claimant is the mother, the 2nd claimant is the father and the 3rd claimant is the brother of the deceased.

3.3 The Insurance Company filed their counter, wherein, they have stated that the private car which was insured with them was used for Tourist purpose and therefore, the Insurance Company is not liable to pay any compensation. In their counter, the Insurance Company have also disputed the claim made by the claimants.

3.4 Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 21 documents, Exs.A-1 to A-21 were marked and on the side of the respondents R.W.1 was examined and 3 documents Exs.D.1 to D.3 were marked.

3.5 The Tribunal, after taking into consideration the oral and documentary evidences of both sides, awarded a total compensation of Rs.16,28,660/- together with interest @ 6 % p.a. as detailed below:-

Sl.No.	Head	Amount of Compensation awarded (Rs.)
1	Loss of dependency	15,71,160
2	Love and affection	30,000
3	Transport Charges	20,000
4	Funeral Expenses	5000
5	Loss of Estate	2500
	Total	16,28,660

As against the said award passed by the Tribunal, the Insurance Company has filed the above appeal.

4. Heard Mr.D.Bhaskaran, learned counsel appearing for the Insurance company and Mr.R.Ramesh, learned counsel appearing for the claimants.

5. The only contention raised by the learned counsel for the Insurance Company is that the Insurance Company is not liable to pay any compensation to the claimants for the reason that the insured vehicle in question is a private Car and the deceased and others were travelled as Tourists at the time of accident. P.W.2, who also travelled along with the deceased in the vehicle had deposed that they travelled as Tourists from New Delhi to Kullu-Manali. However, the learned counsel for the Insurance Company has fairly admitted that the Insurance Policy in respect of the vehicle is a comprehensive policy.

6. The learned counsel appearing for the appellant Insurance Company has also submitted that since the owner of the Vehicle had violated the conditions of the policy by using the private vehicle in question for tourist purpose, the Insurance Company is not liable to pay any compensation.

7. However, countering the submissions, the learned counsel appearing for the respondents submitted that since the policy is a comprehensive one, the Insurance Company is liable to pay compensation to the claimants. It is also not in dispute that at the time of accident, the comprehensive policy was in force. The said aspect was also not disputed by the Insurance Company in their counter. Since the Insurance Policy is a comprehensive one, the Insurance Company is liable to pay the compensation to the claimants.

8. The Tribunal, taking into consideration the evidence of P.W.2 and also the the nature of the policy in question, has rightly held that the Insurance Company is liable to pay the compensation. Though the deceased and others had travelled in the vehicle as Tourists, since the policy is a comprehensive one, the Insurance Company is liable to pay the compensation. The occupants of the vehicle at the time of

accidents are entitled to claim compensation. The Tribunal has taken into consideration all these aspects and rightly awarded the total compensation of Rs.16,28,660/-. Hence, we do not find any reason to interfere with the award passed by the Tribunal.

9. In these circumstances, finding no merit, the Civil Miscellaneous Appeal stands dismissed. It is needless to say that the Insurance Company is entitled to recover the award amount from the owner of the Vehicle in accordance with law.

10. This Court by order dated 16.02.2012 in M.P.No.1 of 2012, had directed the Insurance Company to deposit 50% of the compensation to the credit of M.C.O.P.No.78 of 2006 and the claimants 1 and 2 were permitted to withdraw a lumpsum amount of Rs.3,00,000/- each and the remaining compensation and also the share of compensation in respect of minor/3rd claimant were directed to be invested in any one of the nationalized banks and the 1st claimant was permitted to withdraw the accrued interest once in three months directly from the Bank. Pursuant to the said order, the Insurance Company had also deposited 50% of the compensation amount, which is evident from the order of this Court dated 16.02.2012 made in M.P.No.1 of 2012. Since we have dismissed the appeal, the Insurance Company is directed to deposit the balance amount of compensation with accrued interest and cost to the credit of M.C.O.P.No.78 of 2006 on the file of the Additional District and Sessions Judge, Fast Track Court No.II, Ranipet, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit being made, the claimants 1 and 2 are permitted to withdraw their balance respective shares as apportioned by the Tribunal by filing appropriate applications before the Tribunal. As far as the share of the 3rd claimant minor is concerned, since the 3rd claimant would have attained majority as on date, he is permitted to withdraw his share of the award amount by filing appropriate application before the Tribunal along with proof for attaining majority. There will be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal
Additional District and Sessions Court
/Fast Track Court No.II, Ranipet.

copy to
The section officer
VR section High court Madras

+1 cc to Mr.D.Bhaskaran Advocate sr 61674
+1 cc to Mr.R.Ramesh Advocate sr 61388

rsy(co)
aa29/11/2016