IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No.2394 of 2017
and
C.M.P.No.12921 of 2017

The Manager,
The Oriental Insurance Company Limited,
No.75, Krishnan Street,
Tiruvannamalai. ... Appellant/2nd Respondent

..Vs..

1.Chitra
2.Minor Devashanmugapriya
3.Minor Mohanapriya
4.Minor Kumaram
(Minors 2 to 4 represented by guardian/mother 1st respondent)
5.Senthil Kumar ... Respondents 1 to 4/Petitioner/ 5th Respondent/1st Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP No.788 of 2013 dated 22.08.2016 on the file of Special Motor Accidents Claims Tribunal, Thiruvannamalai.

For Appellant : Mr.M.B.Raghavan

JUDGMENT
(Judgment of the Court was delivered by R. SUBBIAH, J.)

Challenging the Award dated 22.08.2016 passed in MCOP No.788 of 2013 by the Motor Accidents Claims Tribunal, Thiruvannamalai, the present appeal has been filed by the Insurance Company. The respondents 1 to 4 herein are the claimants before the Tribunal, who are the wife and minor children of the deceased Moorthy.

2. The case of the respondents /claimants before the Tribunal is that on 17.08.2010 at about 4.00 p.m, while the

deceased was travelling in a lorry, bearing Registration No.TN 28 AA 5119, owned by the fifth respondent herein and insured with the appellant Insurance Company, the said lorry, which was driven in a rash and negligent manner by its driver, dashed against an electric line running across the road, in which, the deceased got electrocuted and thrown out of the lorry, sustained injuries and died on the spot. Hence, the wife and minor children of the deceased have made a claim of Rs.10,00,000/- as compensation, against the owner as well as the Insurer of the lorry.

3. The claim made by the respondents/claimants was resisted by the appellant Insurance Company by taking a defence that the deceased was travelling in a Goods Vehicle as an unauthorised passenger and he is not covered under Section 147 of the Motor Vehicles Act and hence, the Insurance Company is not liable to pay compensation to the claimants for the death of the deceased.

4. In order to prove their respective claims, on the side of the respondents /claimants, the first respondent/wife was examined as P.W.1, besides examining one Manivannan, who is the eyewitness to the occurrence, as P.W.2 and the FIR, post mortem report and the Motor Vehicle Inspector's report were marked as Exs.P.1 to P.3. On the side of the appellant Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and six documents were marked as Exs.R.1 to R.6.

5. The Tribunal, after analysing the entire evidence adduced before the same, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, in which, the deceased was travelling and hence, the appellant - Insurance Company, which is the insurer of the lorry, is liable to pay compensation of Rs.14,37,500/- to the respondents/ claimants, together with interest at 7.5% per annum from the date of petition. Aggrieved over the same, the appellant Insurance company has filed the present appeal.

6. Heard the learned counsel for the appellant and perused the materials placed before this Court.

7. Regarding the liability of the appellant - Insurance Company to pay compensation to the claimants, it is the case of the appellant Insurance company that at the time of accident, the deceased was travelling in the lorry as an unauthorised passenger and he is not covered under Section 147 of the Act, as such, they are not liable to pay compensation. Whereas, P.W.1, who is the wife of the deceased /first respondent herein, in her evidence, has categorically deposed that the deceased was

working as an agricultural coolie and at the relevant point of time, he was engaged in cutting the sugarcane and he had travelled in the lorry as a load man. In this regard, no contra evidence was adduced, on the side of the appellant Insurance company. Further, Ex.R1 Insurance Policy covers the driver as well as three other persons. Therefore, we are of the opinion that the appellant - Insurance company is liable to pay compensation to the respondents / claimants.

8. With regard to quantum of compensation awarded, the Tribunal has fixed the monthly income of the deceased at Rs.5,000/- and by adding 50% of the same i.e., Rs.2,500/- towards future prospects, arrived at the loss of monthly income at Rs.7,500/-. The Tribunal, after deducting 1/4th amount i.e., Rs.1,875/- towards personal expenses, has arrived at a sum of Rs.5,625/- [(Rs.7,500/-) - (Rs.1,875/-)] towards monthly contribution of the deceased to his family. Thereafter, the Tribunal, considering the age of the deceased, who was 37 years at the time of accident, adopted the multiplier '15' and determined the loss of income at Rs.10,12,500/- (Rs.5,625 x 12 x 15) and accordingly awarded the same to the respondents / claimants. Further, taking into consideration the fact that the first respondent / wife has lost her husband at the young age, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium to her. Similarly, considering the fact that the respondents 2 to 4/ children have lost their father at the tender age, the Tribunal has awarded a sum of Rs.1,00,000/- each to them under the head "loss of love and affection". In addition to that, the Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses. The break up details of the compensation amount, awarded by the Tribunal are as follows:

Loss of income	: Rs. 10,12,500/-
Loss of Consortium to 1st respondent	: Rs. 1,00,000/-
Funeral expenses	: Rs. 25,000/-
Loss of Love and affection (Rs.1,00,000 x 3)	: Rs. 3,00,000/-
Total	Rs.14,37,500/-

9. We do not find any error or infirmity in the award so passed by the Tribunal, as the compensation amount determined under the heads as stated above, are well within the principles laid down by the Apex Court. Therefore, we do not find any compelling circumstances, warranting this Court to interfere with the said award. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous petition is closed.

10. The appellant Insurance Company is directed to deposit the entire award amount with proportionate interest and costs, after deducting the amount already deposited, if any, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of MCOP No.788 of 2013 on the file of Special Motor Accidents Claims Tribunal, Thiruvannamalai within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/wife is permitted to withdraw her share, as apportioned by the Tribunal. Insofar as the compensation amount payable to minor respondents /claimants 2, 3 and 4 are concerned, the Tribunal is directed to invest the same in any one of the Nationalised Banks in a fixed deposit, till they attain majority. The first respondent /mother is permitted to withdraw the accrued interest in respect of the minors' shares once in three months directly from the Bank concerned.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sr/rk

To

The Judge,
Special Motor Accidents Claims Tribunal,
Thiruvannamalai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.59135

C.M.A.No.2394 of 2017

NP(CO)
CA(10/10/2017)