IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

CORAM:

THE HON'BLE Dr.JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2694 of 2017

Branch Manager,
National Insurance Co. Ltd.,
Branch Office, 305 Bangalore Road,
Krishnagiri Town and Taluk,
Dharmapuri District ... Appellant/2nd Respondent

..vs..

1. Raman .. 1st Respondent/Petitioner
2. Kumaravel
(R-2 remained exparte in the lower court)
...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 20.02.2002 made in M.C.O.P.No.907 of 2001 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Dharmapuri.

For Appellant : Mr.N.Vijayaraghavan

J U D G M E N T

This Appeal has been filed by the Insurance Company along with the Application to condone the delay of 260 days in filing the appeal. The said application was considered along with the merits of the matter.

2. Even though the delay is stated to be only 260 days, on the part of the Insurance Company, the delay on the part of the system is very huge and the following details will be self-speaking:-

Date of award	:	20.02.2002
Date of presentation of Appeal	:	06.02.2003
Date of filing	:	09.12.2004
First date of hearing	:	14.12.2004
Next date of listing	:	08.08.2017
Date, when orders passed in the Application	:	29.08.2017

3. The Insurance company has filed this Appeal mainly challenging that there is no liability for the Insurance Company to compensate the claimant, as the deceased was carried in a tractor, which was against the provisions of Section 147 of the Motor Vehicles Act, 1988. It was also contended that the liability is not covered under the policy of Insurance.

4. In order to appreciate the contentions, it is necessary to look into the reasonings given by the Tribunal for fixing the liability on the part of the Insurance Company.

5. From the details of the award, the following factors emerge. The claimant, Raman, aged 18, a Coolie, doing loading and unloading activities, apart from being an agriculturist, earning a sum of Rs.3,000/- per month, met with an accident on 21.05.2000. It is alleged that at the time of accident, the deceased was travelling in the tractor as a loader. The claim petition was filed by the Legal Representatives, claiming a sum of Rs.5,00,000/- as compensation.

6. The Tribunal has passed an award for a sum of Rs.2,83,000/-, which is payable with interest at 9% per annum, from the date of petition till the date of payment. Before the Tribunal, evidence has been let in to prove that the deceased had been travelling in the capacity as a Loader.

7. The Insurance Company has cross-examined the witnesses to the effect that the tractor can be used only for commercial purpose; it does not permit travelling of any other person, excepting the driver; there were no seats provided for any of them, excepting for the driver and therefore, the liability cannot be fastened on the part of the Insurance Company.

7.1. On behalf of the claimant, two witnesses have been examined and four documents have been marked, which includes the Insurance Policy. But on behalf of the Insurance Company neither oral evidence nor documentary evidence have been adduced.

8. The Tribunal has relied upon the evidence of the eye-witness, chinnaswamy, (P.W.2), who has deposed in the chief examination that on 21.05.2000, the deceased Suresh, travelled along with him and while they were travelling, on account of rash and negligent, while negotiating a curve at a place called Paloothupallam, on account of the sudden brakes being applied, Suresh fell down and he later succumbed to the injuries sustained in the accident.

9. Even though, a specific contention has been raised by the Insurance Company that there is no possibility of any other

person to be carried in the vehicle, (as there was no seating provided) to substantiate the same, no oral or documentary evidence has been adduced.

10. It is the duty cast upon the Insurance Company to file the terms and conditions of the policy to show that even the employee of the tractor is not entitled to compensation even under the Employees Compensation Act. The Tribunal has discussed this issue in paragraph 11 of the order. The Insurance Company should have examined the witnesses to speak about the fact that: (a) the type of construction made in the tractor, (b) the terms and conditions under which the policy was issued, and (c) as to whether there is any prohibition for any other person to be carried in the tractor. No attempt has been made by the Insurance Company to examine any witness to that effect has been let in before the Tribunal.

11. In such circumstances, after a period of nearly fifteen years, in the absence of any reliable evidence, it may not be fair to set-aside the award passed as against the Insurance Company. In many cases, it is also found that the documents are not available to the lower Court as they suffered destruction also. The contentions raised by the appellant in ground Nos.2 and 3 do not stand proved and the appellant failed in proving the terms and conditions of the policy.

12. The award of compensation passed by the Claims Tribunal is reasonable, just, fair and does not require any interference by this Court. Therefore, the Appeal has no merits and thus, the Civil Miscellaneous Appeal is dismissed, even though the delay has been condoned. No costs.

13. The appellant / Insurance Company is directed to deposit the amount of compensation, as awarded by the Tribunal, along with interest at 9% per annum (as ordered by the Claims Tribunal), from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the compensation amount to the Savings Bank Account of the claimant / first respondent herein, through RTGS.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal,
   III Additional District Court,
   Dharmapuri.

Copy To
   The Section Officer, V.R.Section,
   Madras High Court, Chennai 104

C.M.A.No.2694 of 2017

pvs(co)
cs/16/05/18