BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.670 of 2017
and
C.M.P.(MD)No.6963 of 2017

The Branch Manager,
Reliance Insurance Company Ltd.,
No.6, Haddows Road, 6th Floor,
Chennai-6. ... Appellant / 2nd Respondent

Vs.

1.Tamilanna
2.Minor Kasi Raja
3.Minor Kalieswari ... Respondents 1 to 3 / Petitioners 1 to 3

(Minor respondents are rep.
By the mother and natural guardian
the first respondent herein)

4.J.Sriram ... 4th Respondent/2nd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Order and Decree dated 10.09.2014 passed in M.C.O.P.No.323 of 2012 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Tuticorin and to allow the present Civil Miscellaneous Appeal.

For Appellant :Mr.K.Gokul
For R-1 :Mr.V.Esakkimuthu

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 10.09.2014 passed in M.C.O.P.No.323 of 2012 by the Motor Accident Claims Tribunal, Principal District Judge, Tuticorin.

2. It is a case of fatal accident took place on 03.09.2011 at about 21.30 hours at Harbour Service Road near Diamond Container, Thoothukudi.

3. It is the case of the claimants before the Tribunal that when the deceased by name Tamilarasi was going on the left side of

Harbour Service road, the two wheeler bearing registration No.TN 37 BC 1323 was driven by its rider in a rash and negligent manner and dashed against the deceased and in the said accident, the deceased sustained injuries and succumbed to the injuries.

4. The claimants filed an application in M.C.O.P.No.323 of 2012 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Tuticorin, seeking compensation.

5. Before the Tribunal, the respondents 1 to 3/Claimants examined three witnesses as P.Ws.1 to 3 and marked five documents as Ex.P.1 to Ex.P.9. On the side of the appellant, two witnesses were examined as R.W.1 and R.W.2 and two documents were marked as Ex.R1 and Ex.R2.

6.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on both sides and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the appellant/Insurance Company and directed the appellant/Insurance Company to pay the compensation at the first instance and then, recover the said amount from the fourth respondent/owner and awarded a sum of Rs.12,95,000/- as compensation.

7. Against which, the appellant/Insurance Company has filed this present appeal challenging the liability as well as quantum.

8.I have heard the learned Counsel appearing for the appellant and the learned counsel for the first respondent and perused all the materials available on record.

9.On evidence, the Tribunal held that the accident took place only due to the rash and negligent driving of the fourth respondent and the fourth respondent did not have the valid driving licence at the time of the accident. Considering the documents produced by the appellant, the Tribunal held that the fourth respondent did not have the valid driving licence. At the same time, to order pay and recovery in respect of a third party, the Tribunal relied on the judgment reported in **2013(2) TN MAC 262 (SC) (S.Iyyappan vs. United India Insurance Company Ltd., and another**, wherein it has been held as follows:

> ***"Insurer has to pay compensation when a valid certificate of Insurance issued - Third party has statutory right to get amount of compensation awarded from Insurer - Insurer may proceed against Owner for recovery in case of violation of Police condition - High Court committed grave error in holding insurer not liable to pay compensation - Held, Insurer liable to pay compensation to Third party Claimants."***

10. In view of the above, Tribunal has rightly directed the appellant to pay compensation at the first instance and then, recover the same from the fourth respondent. There is no error in the said finding. It is well settled law that the claimant should not suffer even after obtaining an order for compensation. The provisions relating to the award of compensation are benevolent provisions in favour of claimant. The Hon'ble Apex Court in various Judgments have formulated the policy of “pay and recovery”. In the present case, there is no reason to deviate from the principle of “pay and recovery”.

11. In respect of quantum, it is contended on the side of the appellant/Insurance Company that the Tribunal without any documentary evidence has fixed a sum of Rs.4,000/- as monthly income of the deceased and calculated the loss of income.

12. In my considered opinion, as per the latest judgments, if the income is fixed, the compensation will be more and therefore, the quantum arrived at by the Tribunal does not require any interference.

13.In the result, this Civil Miscellaneous Appeal is dismissed and the appellant/Insurance Company is directed to pay the amount awarded by the Tribunal at the first instance and then, recover the same from the owner of the vehicle/fourth respondent. The appellant Insurance Company shall deposit the award amount to the credit of M.C.O.P., on the file of claims Tribunal within a period of eight weeks from the date of receipt of a copy of this order and in the later stage, the appellant Insurance Company is entitled to recover the same from the owner of the vehicle/fourth respondent, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in ***2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others).*** On such deposit being made, the first respondent/claimant is permitted to withdraw her share as apportioned by the Tribunal, with proportionate interests and costs. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To,
The Principal District Judge,
Motor Accident Claims Tribunal,
Tuticorin.

+1 CC to M/s.K.GOKUL, Advocate, SR No. 69516

PM
PSM/MR-KKR/SAR1/29.08.2017/4P/3C

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