BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA(MD)No.879 of 2016 and
CMP(MD)No.8120 of 2016

United India Insurance Co.,Ltd,
Rep.by its Manager,
Office at 61/2694, Ist Floor,
Indian Bank Upstairs,
South Main Street,
Thanjavur - 9. ... Appellant

Vs.

1.Thulasiraman
2.Nirmala
3.Prabu
4.Minor Sumathi
5.Muniyandi
(Minor respondent is rep.by
her father and natural guardian,
1st respondent) ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.02.2016 made in MCOP.No.572 of 2014 on the file of the Motor Accident Claims Tribunal / Special District Court, Thanjavur.

For Appellant : Mr.G.Prabhu Rajadurai
For Respondents : Mr.S.Raja Prabhu for R1 to R4
R5-No appearance.

JUDGMENT

Heard the learned counsel for the parties.

2.The insurance company has filed this appeal questioning the impugned award both on the ground of liability as well as quantum.

3.The deceased Manikandan is said to have travelled in an Auto on 07.03.2014. The said Auto is said to have capsized. Crime No.89 of 2014 was registered on the file of Ammapettai police station against the driver of the Auto by name Venkatesh. The said Manikandan was taken to hospital. But, he was brought declared died. The deceased's parents and siblings filed MCOP.No.572 of 2014 on the file of Motor Accident Claims Tribunal, Special District Court, Thanjavur seeking compensation. The Tribunal awarded a sum of Rs.11,37,000/- as compensation. Contending that the vehicle insured by the appellant was not at all involved in the accident, this appeal has been filed.

4.The learned counsel appearing for the appellant insurer pointed out that as per Ex.R1 which is photo copy of the Accident Register, the deceased is said to have travelled as a pillion rider in a two wheeler. This according to the learned counsel falsifies the case projected by the claimant that the deceased was travelled in an Auto. He would further contend that the deceased had travelled as pillion rider in an insured two wheeler and had fallen down and died as a result. For the sake of claiming compensation, the Auto insured with the appellant had been brought into the scene.

5.It is true that the hypothesis projected by the appellants sounds probable. Admittedly, Ex.R1 was filled up by the duty doctor. The doctor was not examined. Ex.R1 came to be marked only through the Law Officer of the appellant insurance company. He has completely in-competent to speak about the contents of Ex.R1. Therefore, this Court must necessarily conclude that Ex.R1 has not been proved as per law. Coming to Ex.R2 which is the copy of the Motor Vehicle Inspector Report, it is seen that the Auto rear view is said to have been damaged. From this one cannot conclude that the Auto was not involved in the accident in question.

6.In this case, Ex.P1 F.I.R was registered against the Auto driver. More than anything else, the appellant insurance company did not take any steps to have the auto driver examined. Therefore, I am of the view that the finding given by the Tribunal in this regard that the vehicle insured by the appellant insurer was only involved in the accident. It does not call for any interference. It based on relevant material and credible evidence.

7.Coming to quantum of compensation, the learned counsel appearing for the appellant pointed out that 50% has been added towards future prospects. Considering the avocation of the deceased, only 40% future prospects can be added. The monthly income of the deceased was taken as Rs.6,000/-. The deceased was aged 22 years. The multiplier will be 18. Since the deceased was a bachelor, the monthly income income for the family would be Rs.4,200/-.

8.The compensation awarded to the claimants will have to be re-worked as under :

For pecuniary loss (4200x12x18)	: Rs. 9,07,200/-
Funeral expenses	: Rs. 15,000/-
Transportation charges	: Rs. 10,000/-
Loss of love and affection for all the claimants.	: Rs. 1,00,000/-
Total :	**Rs.10,42,200/-**

9.The award dated 04.02.2016 made in MCOP.No.572 of 2014 on the file of the Motor Accident Claims Tribunal / Special District Court, Thanjavur is modified.

10.The appellant insurance company is directed to deposit the sum of Rs.10,42,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. Thereafter, the appellant is permitted to recover the paid amount from the fifth respondent by filing execution petition in this very proceeding. On such deposit, the claimants are entitled to withdraw the same as apportioned by the Tribunal, by filing proper application, less the amount already withdrawn by them, if any. The appellant insurance company is permitted to withdraw the balance amount. The share of the minor claimant shall be deposited in any one of the nationalized bank and the natural guardian is entitled to withdraw the interest once in three months directly from the bank, till the minor claimant attains majority.

11.This appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Special District Judge,
   Motor Accident Claims Tribunal, Thanjavur.

2. The Record Keeper, V.R.Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 Copies)

+ 1 CC TO Mr.S.RAJAPRABHU, ADVOCATE IN SR No. 90986
+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 91256

SKM
TE/KKR/SAR-3 : 22/05/2018 : 3P/6C

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