BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.444 of 2013
and
MP(MD)No.1 of 2013

United India Insurance Co.Ltd.,
52, General Muthiah Street,
Sowcarpet, Chennai- 79. ... Appellant/2nd respondent

Vs.

1.M.Murugavalli
2.Minor. M.Muthu
3.Minor. M.Karikalan
4.M.Joseph
5.J.Parvathi ..Respondents 1 to 5/petitioners
6.N.Sudhakaran ..5th respondent/1st respondent
7.S.Mariselvam ..6th respondent/3rd respondent
(The minor Respondents2 & 3 are represented by their mother and next friend 1st respondent.)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.10.2012 passed in M.C.O.P.No.89 of 2007 on the file of the Motor Accidents Claims Tribunal (1st Additional District Judge) Thoothukudi.

For Appellant : Mr.G.Prabhu Rajadurai
For R-1 to R5 : Mr.S.Siva Thilakar
For R-6 : Mr.G.Venugopalan
For R-7 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award, dated 12.10.2012 made in M.C.O.P.No.89 of 2007 by the Motor Accidents Claims Tribunal (I Additional District Judge), Thoothukudi.

2.The case of the claimants before the Tribunal is that on 05.01.2007 at about 14.00 hours, when the deceased Murugan was travelling as a pillion rider in a TVS Champ Motor cycle, which was driven by one Baskar, at Thoothukudi to Tiruchendur Main road near Ayyan koil street at Muthiahpuram, a lorry bearing registration No.TN 45 Z 2527 came in a rash and negligent manner and dashed against the backside of the motorcycle and due to that, the deceased sustained severe injuries and immediately he was taken to hospital and thereafter, he died on 09.01.2007. Hence, the claimants filed an application in M.C.O.P.No.89 of 2007, on the file of the Motor Accident Claims Tribunal Cum I[st] Additional District Judge, Thoothukudi.

3.Before the Tribunal, on the side of the petitioner/claimant, P.W.1 to P.W.3, were examined and Exs.P1 to P7 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 to R3 were marked.

4.The Tribunal, considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only, due to the rash and negligent driving of the driver of the lorry and held that the driver of the offending vehicle did not have a valid licence and hence, directed the appellant to pay at the first instance and then, recover the said amount from the owner of the vehicle, the third respondent therein and awarded a sum of Rs.5,06,500/- (Rupees Five Lakhs Six Thousand and Five Hundred only) as compensation to the claimants.

5.Heard the learned Counsel appearing for the appellant and the learned counsel for the respondents 1 to 6 and also perused all the materials available on record.

6.On evidence, the Tribunal held that the accident took place only due to the rash and negligent driving of the driver of the lorry, which is insured with the appellant and considering the documents produced by the appellant as well as the evidence of R.W.1-Assistant Manager of the Insurance Company, the Tribunal held that the driver of the lorry did not have the valid driving licence. In view of this fact, Tribunal has rightly directed the appellant to pay compensation at the first instance and then, recover the same from the second 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".

7.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/third respondent therein. 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/third respondent therein, 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 major claimants are permitted to withdraw their respective shares 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 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 I[st] Additional District Judge,
Motor Accident Claims Trib unal,
Thoothukudi.

+1cc to Mr.G.Prabhu Rajadurai, Advocate in SR.No.77443
+1cc to S.Siva Thilakar, Advocate in SR.No.77169
+1cc to Mr.M.P.Senthil, Advocate in SR.No.77399

rj2
AE/KK/SAR3/03.10.2017/3P/5C

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