IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.1526 of 2007

United India Insurance Company Ltd,
Motor Third Party Claims Office,
South India-Co-op. Building,
No.38, Anna Salai, Chennai. .. Appellant

Versus

1. Sasikala
2. Anandhan
3. Sukash
4. Amul
5. S.Umachandar
6. Thilagam
7. Anandhan .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 10.03.2006 made in O.P.No.158 of 2002 on the file of the Motor Accidents Claims Tribunal (Additional District Judge/Fast Track Court - II), Kancheepuram.

For Appellant : Mr.D.Bhaskaran

For Respondents: Mr.K.Premkumar

J U D G M E N T

The civil miscellaneous appeal has been preferred against the decree passed in MCOP No.158/2002. The appellant herein is the United India Insurance Company.

2.Aggrieved against the award, the appellant preferred this appeal.

3.The facts leading to the claim application is that while the deceased (Gunasekaran) was riding in his bicycle at about 4.30 am on 21.01.2001, on the left side of the road, the lorry bearing registration No.TN.23 R 2277 which was proceeding from

Vellore towards Madras was driven by the driver in a rash and negligent manner, as a result the said lorry dashed the lorry coming in the opposite direction and caught fire and in turn the deceased who was riding the bicycle sustained burn injury and died on the spot. The claimants have claimed a sum of Rs.10 lakhs as compensation under various heads. The second respondent insurance company in the counter statement denied the claim especially that the deceased was a coolie in the lorry as a false one.

4.The two claim applications filed by the claimant also disputed in the counter statements and the claim under various heads sought for by the claimant also denied by the Insurance Company.

5.The Tribunal after analyzing the evidence and documents has given a finding that the deceased had travelled in a bicycle and he caught fire in the said accident and died due to the burn injury and fixed the liability on the 2nd respondent to pay the compensation of Rs.4,25,000/- awarded by the Tribunal.

6.Aggrieved against the said order, the insurance company has preferred this appeal on various grounds. The main ground raised by the appellant is whether, the deceased was an occupant or driver of the lorry, at the time of the accident.

7.It is also the grievance of the appellant in the appeal that the investigation report, documents Ex.R1 to R3 were not properly considered by the Tribunal. The evidence of RW.2 with regard to Ex.R1 to R3 were not properly analyzed by the Tribunal. The other grounds raised by the appellant is that the policy does not cover the liability of the Insurance Company to pay the compensation.

8.Heard both sides and perused the documents available on record.

9.On a perusal of the order and also the averments made by the appellant-Insurance Company in the counter statement that they have contended the liability by taking the stand that the the deceased never traveled in a cycle. But he travelled as a gratuitous passenger in the first respondent lorry. Ex.R1 is the investigation report that has been filed before the Tribunal in which it has been stated that the deceased was a passenger in the first respondent lorry on the date of occurrence. But he was not cross examined and no opportunity was given to him. Hence, the argument before the Tribunal was that the deceased travelled in the lorry as an unauthorized passenger and hence the insurance company is not liable to pay the compensation.

10.On a perusal of the evidence of P.W.2 who is an eye witness, had deposed before the tribunal that the deceased and himself were riding separate bicycles and they were nearing Thimmasamudram, a lorry which was coming, on the road, spilled chemicals on the deceased and died due to the burn injuries.

11.It is also observed that the first respondent lorry was driven in a high speed and dashed an yet another stationed lorry and heavy fire was broken out. So there is every possibility for the deceased to have caught on fire while he was riding the bicycle. Hence, in the light of the evidence of P.W.2 and other relevant evidence, the Tribunal has come to the finding that the deceased travelled in a bicycle and caught fire in the said accident, due to the burn injuries. Hence, fixing the liability on the 2nd respondent found to be a proper one. Regarding the quantum awarded by the Tribunal, since the appellant insurance company preferred this appeal on the main ground regarding the liability and that has been proved clearly before the Tribunal by evidence and also the documents, there is no need to go into the question of quantum.

12.Hence, in view of the above observation, the order of the Tribunal does not require any interference and the same is confirmed. It is represented before this Court that already the 2nd respondent insurance company, had deposited the entire award amount. Since MCOP is of the year 2001 and already based on the evidence and documents, the finding has been given by the Tribunal, there is no need to go deep into the matter, when the entire amount has been deposited by the insurance company.

13.In view of the above finding, the respondents are permitted to withdraw the entire amount along with interest as apportioned by the tribunal.

14.Accordingly, the civil miscellaneous appeal is disposed of.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

AT

To
1. The Additional District Judge/Fast Track Court - III
    Motor Accident Claims Tribunal,
    Kancheepuram.

2. The Section Officer,
    V.R. Section,
    High Court,
    Madras - 104.

+ 1 cc to Mr.D. Bhaskaran,Advocate Sr.66533
+ 1 cc to MR. K. Premkumar, Advocate Sr.67005

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NRL(CO)
EU(29/11/2018)