IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.2600 of 2006
and
M.P.No.1 of 2006

Branch Manager,
New India Assurance Co. Ltd.,
17, Fort Main Road,
Shevapet-636 002. …. Appellant /Respondent2

Versus

1. S.Jesintha Mary
2. Minor A.Peter Jerald
3. Minor A.John Silvester
4. K.S.Pushpa @ Savariammal
5. R.Sabastian
6. R. Kruse Mary
7. R.Maria Irudayanathan
8. R.Valan Mary ... RR1 to 8/Petitioners
(Minors 2 & 3 rep. By its Mother & NF 1st Respondent)

9. V.S.Iniyavel
(9th Respondent ex parte in Lower Court and hence Notice may be dispensed with)
.... Respondent 9 /Respondent 1

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree in M.C.O.P.No.1610 of 2003, dated 18.07.2005, on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Dharmapuri at Krishnagiri.

For Appellant : Mr.N.Vijaya Raghavan

For Respondents: Mr.V.Kumaravelu, for R1 to R8

R9 : Not Ready Notice

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the judgment and decree in M.C.O.P.No.1610 of 2003, dated 18.07.2005, on the file of the Motor Accidents Claims Tribunal, 1st Additional District Court, Dharmapuri at Krishnagiri.

2.The brief facts leading to the claim application are as follows :-

On 28.08.2002 night i.e., on 29.08.2002 at about 00.15 Hours(a.m.), a person namely Arokiyasamy @ Amulraj was standing on the left side of the road, in the Four-road to Five-road, near the New Bus Stand and in front of Saravana Hotel. At that time, the Toyota Qualis Car bearing Registration No. TN.30.B.1234 belonging to the appellant/Insurance Company insured with the 2nd respondent was driven in a rash and negligent manner with a high speed, without sounding horn and without minding the rules of the road, dashed against the said Arokiyasamy @ Amulraj. As a result, he was thrown away on the road and sustained severe injuries. In spite of the treatment given to him, he died in the Government Hospital, Salem at 1.00 A.M. The legal heirs of the deceased claimed a sum of Rs.15,00,000/- as compensation.

3.The 2nd respondent/Insurance Company in the counter statement has stated that the first respondent/owner of the vehicle gave a cheque towards premium for insurance of the said Qualis Car, on 28.08.2002 and the receipt was also issued on 28.08.2002, hence, the policy was issued extended for the period from 28.08.2002 to 28.08.2003. The said cheque was returned because of the insufficient fund on 31.08.2002, hence, the policy came to be cancelled and the same was also communicated to the first respondent by letter dated 03.09.2002. Hence, the second respondent/Insurance Company is not liable to indemnify the first respondent and not liable to pay compensation.

4.The Tribunal upon analyzing all the facts, evidence and documents placed before it and observed that the deceased, might not be award of the contract between the first respondent and second respondent, who is the third party. It is also observed that the renewal of policy was came into force from 12.00 am on 28.02.2002, and the accident had occurred at 12.15 am on 28.08.2002, the policy was in force since the cancellation of both said policy was intimate to the first respondent on 31.01.2002. The Tribunal has come to the conclusion that, if any lapse on the part of the first respondent with regard to the return of cheque, the same can be recovered from them by way of criminal action. Accordingly, in this case also the Insurance Company is liable to pay the compensation and recover the same from the owner/first respondent. Accordingly, the Tribunal awarded a sum of Rs.7,31,750/- as compensation under various heads.

5.Aggrieved against the judgment, the Insurance Company has preferred this appeal.

6.In the grounds of appeal, it has been stated fastening the liability on the insurance, there is no valid Insurance Policy on the date of accident. The other grievance raised in the appeal is that the monthly income of the deceased fixed at Rs.4,000/- is without any basis and document and the sum determined by the Tribunal by applying the multiplier method is contrary. Hence, the sum awarded by the Tribunal at Rs.7,31,750/- is excessive. The other aspect regarding the indemnification by the Insurance Company is unsustainable in law.

7.Both side heard and perused the materials available on record.

8.It is argued by the appellant/Insurance Company that there is no policy for the said vehicle, the premium paid by the insurer by way of cheque was returned as insufficient funds. Hence, there is no contract between the insurer and the insured, as there was no policy on the date of accident.

9.On perusal of the award, it is observed that the tribunal has considered the aspects that the deceased is only a 3rd party and in no way he can be held responsible for the liability of the Insurance Company or the lapse in paying the premium by the owner of the vehicle and also observed that if any lapse on the part of the first respondent, the second respondent can recover the same by way of criminal proceedings. Hence, the finding of the Tribunal by directing the second respondent/Insurance Company to pay the compensation to the claimants and recover the same from the owner is very much reasonable and need not be interfered with.

10.The sum award by the Tribunal is very much disputed by the Insurance Company. But it is observed that the deceased was running poultry which is a self employed and his monthly income was at Rs.10,000/-. By considering his age was 39, the sum awarded by the tribunal, by taking monthly income at Rs.4,000/- is very much reasonable. The Tribunal has also taken into consideration the number of person claiming compensation as Legal heirs of the deceased is also very much reasonable. The sum arrived for loss of consortium, loss of love and affection and other heads is also reasonable and proper. Hence, this Court is of the considered view that the sum awarded by the Tribunal by taking into consideration, the above aspects is very much reasonable and proper. Accordingly, the judgment of the Tribunal is confirmed.

11.In the result, the civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.Accordingly, the appellant/Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the order of this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. The appellant/Insurance Company is permitted to recover the same from the owner of the vehicle/9th respondent herein by filing appropriate petition. The apportionment is as ordered by the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
   I Additional District Court,
   Dharmapuri at Krishnagiri.

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

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.74554
+1c to Mr.V.Kumaravelan, Advocate Sr.73981

CMA.No.2600 of 2006

ev[co]
srg 27/08/2019