IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1080 of 2011
&
M.P.No.1 of 2011

National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai - 600 002. ...Appellant

Vs

1.Valliyammal
2.Sasikumar
3.Nemichand
4.N.Raja
(R3 & R4 are set ex parte in Lower Court)
...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.09.2010 made in MCOP.No.4258 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judge) Court of Small Causes) at Chennai.

For Appellant : Mr.S.Vadivel
For Respondents 1 & 2 : No appearance
Respondents 3 & 4 -set ex parte

JUDGMENT

The instant appeal has been filed by the insurance company challenging the Award dated 28.09.2010 passed by the Motor Accident Claims Tribunal (Chief Court, Small Causes at Chennai) in MCOP.No.4258 of 2006.

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The brief facts leading to the filing of the instant appeal are as follows:

2. One Ganesan died on 24.08.2005 as a result of an accident caused by a vehicle namely Kinetic Honda bearing registration No.TN09-X-4208, while travelling as a pillion rider, owned by the third respondent and insured with the Appellant. The fourth respondent is the driver of the vehicle. The dependents of the deceased Ganesan who are the first and second respondents in the instant appeal, preferred a claim before the Motor Accident

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Claims Tribunal in MCOP.No.4258 of 2006 seeking a compensation of Rs.10,00,000/-. The Motor Accident Claims Tribunal by its Award dated 28.09.2010 directed the Appellant to pay the first respondent a sum of Rs.2,60,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, excluding the period from 26.11.2007 to 17.03.2010 when the MCOP.No.4258 of 2006 remained dismissed for default.

3. Aggrieved by the Award dated 28.09.2010, the instant Appeal has been filed by the Insurance Company.

4. Heard Mr.S.Vadivel learned counsel for the Appellant. Despite service of notice on the respondents 1 and 2 and their names having been printed in the cause list today, none appears on their behalf. Since this Court is going to confirm the Award, no useful purpose will be served by keeping the appeal pending for non-appearance of the respondents 1 and 2. The respondents 3 & 4 remained ex parte both before the Tribunal as well as before this Court.

5. According to the learned counsel for the Appellant, the Tribunal has erroneously awarded a higher compensation to the first respondent. The learned counsel for the Appellant contended that the Tribunal has failed to take note of the fact that Ex.P1 the First Information Report discloses that the accident was caused by an unknown lorry.

6. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the learned counsel for the Appellant, observes the following:

a) It is an undisputed fact that one Ganesan died on 24.08.2005 as a result of an accident while travelling as a pillion rider in a vehicle namely Kinetic Honda bearing registration No.TN09-X-4208, insured with the Appellant.

b) The Tribunal has given a categorical finding that only due to the rash and negligent driving by the driver / the third respondent of the vehicle which was insured with the Appellant, the accident had happened.

c) The Tribunal has assessed the loss of earning at Rs.2,43,000/- by deducting 50% towards personal expenses and by applying the correct multiplier as laid down by the Hon'ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TN MAC 1 (SC)

d) The Tribunal has also awarded a sum of Rs.10,000/- towards loss of love and affection and a sum of Rs.7,000/- towards funeral and transport to hospital expenses. In all put together, the Tribunal has awarded a total compensation of Rs.2,60,000/- to the first respondent.

e) The respondents 1 & 2 have filed the Legal Heir

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Certificate of the deceased before the Tribunal which was marked as Ex.P3. It is clear that the second respondent is not a dependent of the deceased Ganesan, as per the Legal Heir Certificate. Since the second respondent is not a dependent of the deceased Ganesan, the Tribunal has rightly dismissed the claim of the second respondent.

7. In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the Appeal is dismissed without costs. Consequently connected Miscellaneous Petition is closed.

8. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount that has already been deposited, to the credit of MCOP No.4258 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judge) Court of Small Causes) at Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent is permitted to withdraw the amount lying to the credit of MCOP No. 4258 of 2006 on the file of the Motor Accident Claims Tribunal (Chief Judge) Court of Small Causes) at Chennai by filing an appropriate application.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To
1.The Motor Accident Claims Tribunal
(Chief Judge) Court of Small Causes,
Chennai.

2.The Section Officer,
Vernacular Section,
Madras High Court.(2 copies)

+1 CC to Mr.S. Vadivel, Advocate sr 66095.

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SS(CO)
SP(01/11/2018)

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