IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1622 of 2011
and M.P.No.1 of 2011 & C.M.P.No.5328 of 2018

M/s.National Insurance
Co.Ltd., Branch Office
12, K.K.Road
Muruga Theatre Complex
Villupuram ...Appellant /2nd Respondent.

Vs

1.Selvaraju
2.Valarmathi ..Respondents 1 and 2/Petitioners
3.Shankar ..Respondent No.3/1st respondent.

Prayer:- Civil Miscellaneous Appeal filed against the judgment and decree dated 31.03.2008 passed in MACT.O.P.No.30 of 2005 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Villupuram.

For appellant : : M/s.S.Vadivel
A.Ashokkumar, S.K.Subaihra

for Respondents : : Mr.V.Vadivel for R1 and R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance Company, challenging the judgment and decree dated 31.03.2008 passed in MACT.O.P.No.30 of 2005 on the file of Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Villupuram.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a fatal case. The case of the petitioners is that on 19.05.2003, at about 8.00 a.m., the deceased Narayanasamy was travelling in the Tempo bearing Reg.No.TN-32-BJC-1326 as loadman, due to rash and negligent driving by the driver of the said vehicle, the same capsized resulting in the death of Narayanasamy on the spot itself. According to the Petitioners/parents of the deceased Narayanasamy, the accident occurred due to rash and negligent driving by the driver of the above said Tempo bearing Rg.No. TN-32-BJC-1326, belonging to the 1st respondent. At that time, the

deceased was aged 16 years and he was earning Rs.3000/- per month by working as Loadman. The Petitioners, who are the parents of the deceased were depending on the income earned by the deceased. Due to his sudden demise, the petitioners have lost their son and also his monetary contribution to the family. Thus the Petitioners sought for a sum of Rs.3,00,000/- as compensation from the respondents, who are the owner and insurer of the above said offending vehicle.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the accident did not occur in the manner alleged by the Petitioners. The claim of the Petitioners that the Tempo Van bearing Reg.No.TN-32-BJC-1326 was driven by its driver in rash and negligent manner and the deceased being an unauthorised passenger is not entitled to ask for any compensation. In the FIR, offending vehicle was shown as "unknown". As such, the vehicle bearing Reg.No. TN-32-BJC-1326 was not involved in the accident. The deceased travelled in the goods vehicle as unauthorised passenger. The deceased was not a loadman or cooly attached to the said vehicle. The above said vehicle was not involved in any accident on 19.05.2003. The claim of the Petitioner is exorbitant. The 2nd respondent is not liable to pay any compensation. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.3 to prove their claim. On the side of the respondents, R.W.1 was examined, documents Ex.R.1 to Ex.R.3 was marked. On careful analysis of the evidence available on record, the Tribunal found that negligence on the part of the 1st respondent vehicle driver alone caused the accident and passed award for a sum of Rs.2,00,000/- payable by the 2nd respondent to the Petitioners. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the Present Appeal.

5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. The learned counsel for the Appellant/2nd respondent-Insurance Company contends that without appreciating the evidence on record properly, the Tribunal has fastened the liability on the 1st respondent vehicle driver. The contents of Ex.P.1-FIR was not considered by the Tribunal properly. The Petitioners failed to establish the involvement of the Tempo vehicle bearing Reg.No.TN-32-BJC-1326 in the accident. In the FIR itself, it is clearly stated that the deceased Narayanasamy aged 16 years boarded the Lorry along with his grand mother and grandfather as passengers and that itself will disprove the

claim of the petitioners. The Policy will not provide coverage for Gratuitous passenger and the deceased was aged 16 years and not a cooly. The Tribunal ought to have dismissed the claim petition. Thus, the 2nd respondent/Insurance company/appellant sought to set aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the respondents/petitioners/claimants contends that it is clearly established by evidence that the deceased travelled as a cooly in the vehicle involved in the accident and the Tribunal on proper appreciation of evidence held that negligence on the 1st respondent vehicle driver alone caused the accident. On the available evidence, the Tribunal passed just and fair award and the same need not interfered with. Thus, the petitioners/respondents 1 and 2 sought for dismissal of the appeal.

8. The 1st petitioner who deposed as P.W.1 clearly stated about the accident which took place on 19.05.2003. The Petitioners who are the parents of the deceased contend that their son deceased Narayasamy travelled as a load man in the tempo bearing Reg.No.TN-32-BJC-1326. The Police also registered the case as evidenced by Ex.P.1-Copy of FIR. Admittedly P.W.1 is not eyewitness to the accident. The person who witnessed the accident deposed as P.W.2 and stated that on 19.05.2003 at about 8.00 a.m., while he was coming from South to North, in the Kottai to Aasanoor road, he saw a tempo van carrying goats at high speed. On seeing that he stopped his cycle and saw three persons including Narayanasamy in the vehicle. According to him, the vehicle capsized and Narayanasamy died on the spot. It is therefore clear that the accident occurred due to high speed in which the said vehicle was driven.

9. On the other hand, the staff of the 2nd respondent/Insurance company who deposed as R.W.1 has stated that in the FIR itself, it is stated that "unknown vehicle and the Registration number of the vehicle is not mentioned". Therefore, the 1st respondent vehicle was not involved in the accident and they are not liable to pay any compensation. It is true that the Registration number of the vehicle is not mentioned in the FIR. It is stated by R.W.1 that they issued notice to the 1st respondent as evidenced by Ex.R.1 and the above said vehicle was insured with them as per Ex.R.3 Insurance Policy. Thus, the 2nd respondent contends that the vehicle insured with them is not involved in the accident.

10. The tribunal, taking into consideration the fact that no contra evidence was let in by the respondents by examining the driver of the 1st respondent vehicle or any other person,

concluded on the basis of P.W.2 evidence and the other materials produced by the petitioner that the accident occurred only due to negligence of the 1st respondent vehicle driver. Before this court also, no ground is made out by the appellant/2nd respondent-Insurance company to interfere with the said conclusion of the Tribunal.

11. The Petitioners/parents of the deceased Narayanasamy contends that the deceased was aged 16 years at the time of the accident and by working as load man was earning Rs.3000/- per month. Under Ex.P.3-Post Mortem Certificate, his age was stated as 11 years. As such, the age of the deceased was fixed by the Tribunal as 11. The Tribunal pointed out that at the age of 11 years, the deceased could not have worked as loadman. Admittedly, no negligence is fastened on the deceased who travelled in the tempo van bearing Reg.No.TN-32-BJC-1326. The Tribunal also found that there is no evidence to prove that the deceased worked as loadman and earned Rs.3000/- per month. In such circumstances, the Tribunal considering the age of the deceased as 11 years and the petitioners who are the parents of the deceased lost their only child awarded a sum of Rs.2,00,000/- in toto as compensation to the petitioners payable by the respondents.

12. Even though the learned counsel for the 2nd respondent-Insurance company contended that the vehicle insured with them is not involved in the accident, the Tribunal categorically held that the 1st respondent vehicle was involved in the accident. No convincing reason is adduced by the 2nd respondent-Insurance company to interfere with the conclusion of the Tribunal fixing negligence on the driver of the 1st respondent vehicle for the accident. As such, this court finds no merit in the appeal. The amount awarded by the Tribunal as total compensation appears to be just and proper and the same needs no interference. Accordingly, the appeal fails and the same is dismissed. This court, by order dated 24.06.2011 in M.P.No.1 of 2011 directed the appellant/2nd respondent-Insurance company to deposit the entire award amount together with accrued interest and cost. As such, the petitioners in MCOP.No.30 of 2005/respondents 1 and 2 herein are entitled to withdraw the entire award amount along with accrued interest and cost as apportioned by the Tribunal, by filing necessary application before the Tribunal. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Villupuram.

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

+1cc to Mr.V.VADIVEL, Advocate, S.R.No. 26930
+1cc to Mr.S.VADIVEL, Advocate, S.R.No. 27057

C.M.A.No.1622 of 2011

NA(CO)
TR(11/06/2018)