IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2260 of 2003
and
C.M.P.No.13673 of 2003

M/s.Oriental Insurance Company Limited
Namakkal. ... Appellant/2nd Respondent

Vs

1.Kuppusamy
2.Arukkani
3.Palaniappan ...Respondents/Claimants & 1st respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 29.06.2001 made in MCOP No.374 of 1996 on the file of the Motor Accidents Claims Tribunal (Sub Court), Namakkal.

For Appellant : Mr.S.Janarthanam

For R1 and R2 : Mr.KRA. Muthukrishnan

JUDGMENT

Challenging the judgment and decree dated 29.06.2001 passed by the Motor Accidents Claims Tribunal, Sub Court, Namakkal in MCOP.No.374 of 1996, the appellant insurance company has preferred this Civil Miscellaneous Appeal.

2.The case in brief is as follows:

On the fateful day, i.e., on 12.07.1995, at about 12.00, one Karuppusamy was travelling in a Tractor bearing Regn.No.TN28 6891 belonging to the third respondent and insured with the appellant insurance company, attached with Trailer containing sugarcane laden from Subbathal Sugarcane Field to Krishnapuram. When the vehicle was proceeding on Udumalpet - Palani Road, near Mosaic Flooring Tiles Company at Palappampatti, the driver of the vehicle turned it to the left side of the road rashly and negligently, due to which, the vehicle capsized. As a result of the same, the said Karuppusamy died on the spot. Hence, the parents of the deceased filed a claim petition claiming compensation of Rs.3,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.2,88,000/- with interest at 9%pa from the date of petition. Aggrieved over the same, the appellant insurance company has come up with this appeal.

3.The learned counsel for the appellant insurance company submitted that the deceased had travelled in the goods carrying vehicle as gratuitous passenger, in violation of the policy conditions and hence, the appellant insurance company is not liable to pay compensation. The learned counsel also submitted that the multiplier of 18 adopted by the Tribunal taking into consideration the age of the deceased, is incorrect and hence, the compensation awarded under the head “loss of income” has to be recalculated by adopting the correct multiplier taking into consideration the age of the parent.

4.Per contra, the learned counsel for the respondents/claimants submitted that the Tribunal, after looking into the oral and documentary evidence adduced by the parties, has rendered its findings on negligence and liability on the appellant insurance company and awarded the just compensation and hence, the same do not call for any interference at the hands of this Court.

5.Heard both sides and perused the records.

6.It was putforth on the side of the appellant insurance company before the Tribunal that the deceased had travelled in the vehicle as unauthorised passenger along with four other persons in violation of the policy conditions and hence, they are not liable to pay any compensation to the claimants. However, no oral and documentary evidence was let in to prove that the owner permitted the driver to carry more passengers than the permitted capacity in the vehicle involved in the accident, in violation of the policy conditions. Whereas on the side of the claimants, P.W.2/eyewitness to the occurrence has deposed that the driver of the vehicle was responsible for the accident. As per Ex.P1 FIR, it was revealed that due to rash and negligent driving of the driver of the Tractor, the accident had occurred. Placing reliance on those materials and evidence, the Tribunal has rightly come to the conclusion that the accident had happened due to the rash and negligent act on the part of the driver of the vehicle and accordingly, fastened the liability on the appellant insurance company, which this Court is not inclined to interfere.

7.As regards the quantum of compensation, based on the evidence of P.W.3 and other documentary evidence adduced by the respondents/claimants and also in the light of the decision of the Supreme Court, the Tribunal has taken into consideration the age of the deceased and adopted the multiplier of 18 and fixed his income at Rs.2,000/- per month and after deducting 1/3rd towards his personal expenses and ultimately, determined the compensation under the head loss of income at Rs.2,88,000/-, which in the opinion of this Court is just and reasonable and also as per the settled principles of law and hence, the same need not be interfered.

8.Thus, affirming the award passed by the Tribunal, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant insurance company is directed to deposit the entire compensation amount with interest and costs, as awarded by the Tribunal, less the amount if any already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the same to the respective bank accounts of the respondents/claimants through RTGS within a period of one week thereafter, as per the ratio of apportionment made by the Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dua/srk/rk

To

1.The Motor Accidents Claims Tribunal
Sub Court, Namakkal.

Copy to:
The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.K.R.A.Muthukrishnan, Advocate SR.48974

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SSI(CO)
CB(04/03/2020)