IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2312 of 2004

The New India Assurance Co. Ltd.,
Third Party Cell
45, Moore Street
Chennai - 600 001. ... Appellant/2nd Respondent

vs.

1. Pattu
2. Minor Sujatha
3. Minor Sathish
(Minor respondents 2 and 3 represented by their Mother and next friend Pattu)
4. Chellammal
5. Gopal ...1 to 5 Respondents/1 to 5 Petitioners
6. P.Saravanan ... 6th Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 19.03.2003 made in M.C.O.P.No.403 of 1995 on the file of the Motor Accidents Claims Tribunal, (Fast Track Court No.III), Poonamallee.

For appellant : Mr.C.Ramesh Babu

For respondents 1 to 4 : Mr.C.Prabakaran

JUDGMENT

This appeal has been filed by the appellant insurance company challenging the award dated 19.03.2003 passed by the Motor Accidents Claims Tribunal, (Fast Track Court No.III), Poonamallee, in M.C.O.P.No.403 of 1995.

2.The case in brief is as follows:

On 03.06.1995 at about 12.30 p.m, one Venkatesan was travelling as a cleaner in a recovery van bearing Registration No.TN09/6397 belonging to the sixth respondent and insured with the appellant insurance company. When the vehicle was nearing at Pattabiram Bus stop, due to rash and negligent driving by its driver, he fell down and the backside wheel of the vehicle ran over him. Due to the said impact, he died on the spot. Stating so, the legal heirs of the deceased filed a claim petition claiming a compensation of Rs.4,20,000/-. The Tribunal, on consideration of the evidence and materials available on record, has awarded a total compensation of Rs.2,30,000/- with interest at 9% pa from the date of petition. Aggrieved over the same, the appellant insurance company has filed this appeal.

3.The learned counsel for the appellant submitted that Ex.R1 insurance policy was 'Act only policy' and the sixth respondent/owner of the vehicle did not pay any extra premium to the appellant for covering unlimited liability and hence, the appellant was not liable to pay compensation to the respondents/claimants. He further submitted that when the deceased was working as a cleaner under the sixth respondent, the Tribunal ought to have awarded the compensation under the provisions of the Workmen Compensation Act.

4.Per contra, the learned counsel for the respondents/claimants submitted that the Tribunal, after analysing the oral and documentary evidence adduced by the parties, has correctly 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 by this Court.

5.Heard both sides and perused the records.

6.There is no grievance as regards the finding of the Tribunal that the accident had occurred due to the rash and negligent driving of the driver of the vehicle, in which the deceased was travelling and hence, the same is confirmed as such.

7.The main contention of the learned counsel for the appellant insurance company is that Ex.R1 insurance policy was 'Act only policy' and there was no extra premium collected from the owner of the vehicle, its liability is only limited to the extent of provisions of the Workmen Compensation Act and not under the Motor Vehicles Act. However, the Tribunal, based on the evidence and materials available on record and placing reliance on the decisions of the Orissa High Court in Orissa State Road Transport Corporation v. Shankar Sahu [II (1989) ACC 574], has fastened the liability on the appellant insurance company and quantified the compensation under the Motor Vehicles Act. As it is well settled that for the death of or bodily injury to any person, claim for compensation may be adjudicated under the Motor Vehicles Act as well as the Workmen's Compensation Act, this Court finds no reason to differ with the findings so rendered by the Tribunal and hence, the same are hereby confirmed.

8.In fine, this appeal stands dismissed. No costs. The appellant insurance company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. It is submitted by the learned counsel for the respondents/claimants that the minor claimants attained majority as of now. Hence, on such deposit by the appellant, the respondents 1 to 4/claimants are permitted to withdraw their respective shares, as per the ratio of apportionment made by the Tribunal, on making proper application.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Judge,
Motor Accidents Claims Tribunal,
(Fast Track Court No.III), Poonamallee.

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

+1cc to M/s.C.Ramesh Babu, Advocate Sr.49912
+1cc to M/s.C.Prabakaran, Advocate Sr.50518

C.M.A.No.2312 of 2004

rp[co]
srg 26/08/2020