IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2019

Coram:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Civil Miscellaneous Appeal No.1733 of 2007 and
M.P.No.1 of 2007

The Branch Manager
M/s.New India Assurance Company Limited
Division Office, II Floor, Moosa Sait Complex
Coonoor Road
Ootacamund
The Nilgiris Appellant /3rd Respondent

Vs

1. K.Velluswamy Respondent/Claimant
2. Kuttan Pillai - owner Respondent/1st Respondent
3. Raju Kumar - driver Respondent/2nd Respondent
4. Rajappan -father of deceased Respondent/4th Respondent
5. Patchiammal- mother of deceased Respondent/5th Respondent

The 2nd and 3rd respondents
Exparte before the Tribunal

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 28.12.2006 passed by the Motor Accidents Claims Tribunal, District Judge, The Nilgiris, Udhagamandalam in MCOP No.23 of 2004.

For Appellant : Mr.S.Manohar
For R1, R4 and R5 : Mr.B.Soundarapandian
R2 & R3 - Exparte

J U D G M E N T

In respect of an accident that took place on 13.02.2003, when one Geetha was travelling in a Jeep bearing Reg.No.TN 43 5670, which was driven by the 3rd respondent herein and hit the culvert and fell into a pit, due to which, the said Geetha sustained multiple injuries and subsequently she died. The legal representative of the deceased /the husband of the deceased Geetha has filed a claim petition, claiming a sum of Rs.20,00,000/- as compensation. The Tribunal has awarded a sum of Rs.1,87,000/- as total compensation by fixing the negligence on the part of the owner of the Jeep and liability on the insurer of the jeep.

2. Challenging the findings of the Tribunal on negligence as well as quantum, the Insurance company has preferred this appeal.

3. Heard both sides.

4. The learned counsel for the appellant Insurance Company has submitted that the Tribunal failed to appreciate that the deceased was a gratuitous passenger in a private vehicle. The learned counsel further submitted that the Tribunal failed to consider the policy is an Act only policy and hence the insurer is not liable to pay the compensation. He further submitted that the award passed by the Tribunal is excessive and hence the award of the Tribunal has to be interfered with.

5. Per contra, the learned counsel for the 1st respondent/claimant and respondents 5 & 6 submitted that the Tribunal based on the evidence and documents produced, fastened the liability on the 3rd respondent herein/owner of the vehicle and the appellant Insurance Company and quantum arrived at by the Tribunal cannot said to be on the higher side. He further submitted that the Tribunal has not considered the non pecuniary damage and some amount has to be awarded under the said head.

6. The Tribunal has considered Ex.A.1 First Information Report and Ex.A.2 Post Mortem Certificate and Ex.A.3 Motor Vehicle Inspector's Report and observed that the deceased was one of the passenger in the jeep and the deceased died due to the accident, which occurred on 13.02.2003 and the accident had not occurred due to the mechanical defect of the jeep. The Tribunal has taken shelter from the evidence of PW 2, who was one of the traveller in the jeep, at the time of accident and observed that there is no rebuttal or contra evidence to reject the evidence of PW 2 and fastening the liability on the owner of the vehicle should be indemnified by the insurer. The Tribunal has also taken note of the decisions of Hon'ble Supreme Court in United India Insurance Company Ltd, Shimla Vs Tilak Singh and others reported in (2006 (4) SC cases 404 and AIR 2004 Supreme Court 4360 and has held that the insurer at first is liable to pay the compensation and get it recovered from the owner, through Execution Proceedings, without filing any regular suit. The observations made by the Supreme Court are as follows:-
In United India Insurance Company Ltd, Shimla Vs Tilak Singh and others (2006 (4) Supreme court cases 404), the Hon'ble Supreme Court has held as follows:-

> "In our view, although the observation made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehcile also. Thus, we must uphold the contention of

the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajindee singh who was a pillion rider, as the Insurance policy was a statutory policy, and hence it did not cover the risk of death or bodily injury to a gratuitous passenger"....

Further, it is observed by the Tribunal that the Insurance Company is not liable to pay the compensation as Ex.B.1 Policy does not cover the risk of passengers.

In Pramod Kumar agrawal V.Mushtari Begum (AIR 2004 Supreme Court 4360), it has been held that,

> "Liability of Insurance Company – Death of gratuitous passenger in goods vehicles – Insurance company not liable to indemnify award – However, quantum of compensation fixed by the Tribunal must be initially paid by insurer and later get it recovered from owner through execution proceedings without filing any regular suit"

7. Though the learned counsel for the appellant stated that the deceased being a gratuitous passenger in the jeep and the policy is Act only policy, there is no evidence produced by the appellant herein before the Tribunal to show that it was act only policy. Placing reliance on the above, the Tribunal has fastened the liability on the owner and insurer of the jeep. This Court is of the view that the findings rendered by the Tribunal are based on settled principles of law and no interference is required.

8. Regarding the quantum of compensation is concerned , the Tribunal has taken the monthly income of the deceased at Rs.1,250/- and adopted the multiplier '18' as per 163 A of Motor Vehicles Act, and deducted 1/3rd of his income towards his personal expenses and awarded Rs.1,70,000/- towards loss of dependency. Further, the Tribunal has awarded a sum of Rs.5,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses, Rs.10,000/- towards loss of happiness. The amounts arrived at by the Tribunal perfectly matches with the II schedule of Motor Vehicles Act and no interference is required on the findings of quantum and the same is confirmed as such.

9. In the result, affirming the award of the Tribunal, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company shall deposit the entire compensation amount, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle/second

respondent herein. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant forthwith, through RTGS. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrn

To

1. The District Judge, Motor Accident Claims Tribunal
   The Nilgiris, Udhagamandalam

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

+1cc to Mr.B.Soundarapandian, Advocate, S.R.No. 29180
+1cc to Mr.S.Manohar, Advocate, S.R.No. 69020

CMA No.1733 of 2007 and
M.P.No.1 of 2007

BR(CO)
GN(23/11/2020)