IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2019

DELIVERED ON : 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2314 of 2007
and M.P.No.1 of 2007

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

Vs

1.Vijayalakshmi
2.K.Kamali (minor)
3.Murugaiyammal
4.K.Raskutti (minor) .... Petitioners
(Minor respondents 2 and 4 rep.by their mother and next friend, Vijayalakshmi, the first respondent herein).
5.S.Jeba
... 1st Respondent/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.08.2006 made in MACTOP No.478 of 2003 on the file of the Motor Accidents Claims Tribunal (Addl. District Judge, Fast Track Court No.IV) at Poonamallee.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.C.Prabhakar for R1 to R4
R5 : NA

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.6,40,000/- towards compensation to the legal heirs of the deceased Kanakaraj, due to his death in a motor vehicle accident.

2.The case in brief, is as follows:

On 08.06.2003, at about 3.40 p.m., the deceased was sleeping inside the premises of M/s.Sindhu Cargo Services Ltd., No.179, P.H. Road, Maduravoyal. At that time, a tanker lorry bearing Reg.No.TN-01-K-1611 belonging to the fifth respondent herein and insured with the appellant Insurance Company, came at high speed in a rash and negligent manner in the P.H.Road due to which the tanker lorry deviated from the road, ran over the ditch, dashed on the eastern side compound wall of the said premises and further ran over the sleeping deceased. Due to the said impact, the deceased sustained multiple grievous injuries and died on the spot. The legal heirs of the deceased filed a claim petition before the Tribunal. On consideration of the evidence available on record, the Tribunal awarded a total compensation of Rs.6,40,000/- with interest at the rate of 7.5% per annum from the date of petition, to the claimants. The appellant Insurance Company and the fifth respondent were directed to pay the said sum jointly and severally.

3.Challenging the judgment passed by the Tribunal, the appellant Insurance Company has come up with the present appeal.

4.The learned counsel for the appellant has submitted that the Tribunal ought to have exonerated the appellant Insurance Company and fastened the liability only on the owner of the lorry, as the insurance policy was cancelled in view of the dishonour of the cheque issued by the owner, towards premium. It is submitted that the documentary evidences adduced by the appellant would prove that the cheque dated 27.12.2002 issued by the fifth respondent, the owner of the lorry towards premium was returned by the banker due to insufficiency of funds and thereafter the policy was cancelled and the said cancellation was intimated on 02.01.2003 to the owner of the lorry, whereas the accident had occurred only on 08.06.2003. Thus, he submitted that since well before the date of accident, the cancellation of the policy had been intimated to the owner of the lorry, the Insurance Company is not liable to pay any compensation, as there was no policy coverage at the relevant point of time. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the claimants has submitted that the Tribunal has considered the oral and documentary evidence in proper perspective and has granted the compensation. It is also submitted that the Tribunal has properly analysed the matter and correctly directed both the owner of the vehicle and the Insurance Company, to pay the compensation jointly and severally. Hence, according to the learned counsel for the claimants, the judgment of the Tribunal does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.On considering the oral and documentary evidences adduced, the Tribunal has given a finding that the accident had occurred only due to the rash and negligent driving of the driver of the tanker lorry and the same is not disputed by both the sides.

8.Now, this Court has to decide as to who is liable to pay the compensation, whether the Insurance Company or the owner of the vehicle or both of them jointly?

9.Law is well settled that if the cheque issued by the owner of the vehicle gets bounced due to insufficiency of funds or any other reason, and subsequently the Insurance Company cancels the policy on the ground of non-payment of premium and the same has been informed to the owner well before the date of accident, the Insurance Company is not liable to pay any compensation. In the present case, it was put forth on behalf of the Insurance Company before the Tribunal that after the cheque got bounced, the policy was cancelled and the same was informed to the owner of the lorry well in advance, ie., well before the date of accident. But there is no evidence available to show that the cancellation of the policy was intimated to the owner of the vehicle. Further, no acknowledgement card has been produced to prove that the owner received the letter of the Insurance Company in respect of cancellation of the insurance policy. In these circumstances, considering the fact that this is a third party claim, the Tribunal has observed that the Insurance Company has to pay the compensation, but ordered that both the owner and the Insurance Company have to pay the compensation, jointly and severally, to the claimants. Since the Insurance Company has not proved before the Tribunal that cancellation of the policy upon bouncing of the cheque has been informed to the owner before the accident took place, this Court is not inclined to interfere with the order passed by the Tribunal, directing both the owner and the Insurance Company to pay the compensation, jointly and severally, to the claimants.

10.With regard to the quantum of compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.6,12,000/- towards loss of expectation, fixing the monthly income of the deceased at Rs.4,500/- as he was working as a driver, deducting 1/3rd of the amount towards personal expenses and applying the multiplier of 17. The Tribunal has also awarded a sum of Rs.13,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. The Tribunal has correctly assessed the income of the deceased, adopted the correct multiplier and arrived at the sum of Rs.6,12,000/- towards loss of expectation. The amounts awarded by the Tribunal towards other heads are very reasonable and hence the same are confirmed.

11.In the result, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount with interest, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the major claimants are entitled to withdraw their respective shares, on filing proper application before the Tribunal. In respect of minors, their shares shall continue to be in the bank deposit as ordered by the Tribunal, till they attain majority. The interest accrued in the deposit, shall be withdrawn directly from the bank, by the first respondent-mother of the minors, which shall be used for the benefit and welfare of the minors.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal
(Addl. District Judge, Fast Track Court No.IV) at Poonamallee.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.C.Prabhakar, Advocate sr.68871
+1cc to Mr.M.Krishnamoorthy, Advocate sr.68243

Judgment made in
C.M.A.No.2314 of 2007
and M.P.No.1 of 2007

pvs(co)
nr 03/02/2020