IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1855 of 2008
and M.P.No.1 of 2008

The Branch Manager,
The New India Assurance Co.Ltd.,
No.3, Main Road, Dindigul. ... Appellant/2nd Respondent

Vs

1.Shanthi
2.Sakthivel
3.Minor Silambarasan
4.Minor Priya
(Minor respondents 3 and 4 represented by their mother Shanthi, the first respondent herein).

5.Ambika
6.Minor Prema
7.Minor Prasanth
8.Minor Praba
(Minor respondents 6 to 8 represented by their mother Ambika, the fifth respondent herein).

9.Rajammal
10.V.A.Sekar ... Respondents/Petitioners 1 to 9 & 1st Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 23.08.2006 made in MCOP No.563 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate No.II) at Krishnagiri.

For Appellant : Mr.K.Padmanabhan

For Respondents: Mr.M.Selvam for R1 to R9
Mrs.M.Malar for R10

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.5,76,400/- towards compensation to the respondents 1 to 4 and 6 to 9, due to the death of the husband of the first and fifth respondents, in a motor vehicle accident.

2.The case in brief, is as follows:

On 21.05.2002, at about 07.00 p.m., the deceased Kumar was travelling in the lorry bearing Reg.No.TN-28-6010 belonging to the tenth respondent herein and insured with the appellant Insurance Company, from Tirupattur to Sirkali, as a loadman. One Venkatesan was also travelling in the said lorry as a cleaner. The lorry was proceeding in the Tirupattur - Singarapettai Main Road. When the lorry reached near Visuvasampatti, due to the rash and negligent driving of the driver, the lorry dashed against a road-side tamarind tree. Due to the said impact, the deceased Kumar sustained fatal injuries and he was taken to the Government Hospital, Tirupattur and he died in the hospital. The legal heirs of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.10,00,000/- as total compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.5,76,400/- with interest at the rate of 7.5% per annum from the date of petition. The Tribunal directed the Insurance Company to pay the compensation to the claimants and granted liberty to recover the same from the owner of the vehicle, on the ground of violation of policy conditions.

3.Challenging the judgment and decree passed by the Tribunal, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant Insurance Company has submitted that the Tribunal having found that the deceased Kumar was an unauthorised passenger travelling in the goods vehicle belonging to the tenth respondent herein, ought not to have made the appellant liable to pay any compensation as per law, and ought not to have directed the appellant to pay the amount of compensation to the respondents 1 to 4 and 6 to 9 and thereafter recover the same from the owner of the vehicle, the tenth respondent herein. He also disputed the quantum of compensation awarded by the Tribunal, stating that the same is excessive and exorbitant.

5.The learned counsel for the respondents 1 to 9 / claimants has submitted that the Tribunal has rightly considered the materials and evidence and has rightly awarded the compensation which is just, fair and reasonable and further the Tribunal has correctly directed the Insurance Company to pay the compensation to the claimants and then recover the same from the owner of the vehicle. Hence, according to the learned counsel for the respondents 1 to 9 / 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.It was put forth on the side of the Insurance Company before the Tribunal that the accident had not occurred due to the rash and negligent driving of the driver of the lorry; that the lorry driver drove the lorry slowly and cautiously, but a four-wheeler from the opposite direction came rashly and negligently and dashed against the lorry and because of the same, the lorry driver applied sudden brake and consequently the lorry dashed against the road side tamarind tree. But the said contention put forth by the Insurance Company has not been proved by producing proper documents. Based on Ex.P1-First Information Report and Ex.P4-Charge Sheet, the Tribunal came to the conclusion that the accident had occurred only due to the negligence on the part of the lorry driver, which factual finding this Court is not inclined to interfere.

8.Since the accident had occurred only due to the negligent driving of the driver of the lorry, being the insurer of the lorry, the appellant Insurance Company has been directed to pay compensation. Further, since the claimants have not proved the contention put forth on their side that the deceased travelled in the lorry as a loadman and not as unauthorised passenger, the Tribunal has accepted the contention made on behalf of the Insurance Company that the deceased travelled in the lorry as unauthorised passenger. Accordingly, while directing the Insurance Company to pay the compensation to the claimants, granted liberty to recover the same from the owner of the vehicle by filing an execution proceedings without even filing a case. But the contention of the Insurance Company is that the Tribunal ought not to have ordered for pay and recovery, since the deceased travelled as unauthorised passenger. On consideration of the materials and evidence available on record, this Court finds that neither the Insurance Company has proved that the deceased travelled unauthorisedly nor the claimants have proved that the deceased travelled as a loadman. Hence, the contention of the Insurance Company to indemnify them from making payment of compensation to the claimants, will not stand and accordingly, the judgment of the Tribunal ordering the Insurance Company to pay the compensation to the claimants and recover the same from the owner of the vehicle, stands confirmed.

9.With regard to the compensation awarded by the Tribunal, the Tribunal has awarded a sum of Rs.5,12,000/- towards loss of income. The said sum has been arrived at by fixing the monthly income of the deceased at Rs.4,000/-, arriving at the annual income at Rs.48,000/-, deducting 1/3rd of the amount towards personal expenses of the deceased and adopting the multiplier of 16. The Tribunal was of the view that the deceased would have certainly earned the said sum of Rs.4,000/- per month as a coolie, taking note of the fact that he took care of his wives, children and mother numbering 9. The Tribunal has also awarded a sum of Rs.25,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate, Rs.30,000/- towards loss of love and affection to the children of the deceased, Rs.5,000/- towards loss of love and affection to the mother of the deceased. The Tribunal has correctly assessed the monthly income of the deceased, adopted the correct multiplier and arrived at the sum of Rs.5,12,000/- towards loss of income. The amounts awarded by the Tribunal towards other heads are also very reasonable and hence the same are confirmed. Even though the total compensation works out to Rs.5,76,500/-, while apportioning the compensation amount to the claimants, the Tribunal has made it to Rs.5,76,400/-. It is also seen that even though the name of the second wife of the deceased, viz. Ambika has been arrayed as the fourth petitioner and Minor Priya has been arrayed as fifth petitioner in the cause list in the judgment made in MCOP No.563 of 2004, the Tribunal has passed the judgment treating the said Ambika as the fifth petitioner and Minor Priya as the fourth petitioner.

10.In the result, the impugned judgment and decree passed by the Tribunal are confirmed and the Civil Miscellaneous Appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No costs. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, 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. The minor respondents 3, 4 and 6 to 8 would have attained majority by now. Hence, on such deposit being made, the respondents 1 to 4 and 6 to 8 / claimants are permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

KM

To

1.The Chief Judicial Magistrate No.II,
The Motor Accidents Claims Tribunal
at Krishnagiri.

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

+1 cc to Mr.M.Selvam Advocate sr71383
+1 cc to Mr.M.Malar Advocate sr71998

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