IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3093 of 2008

Branch Manager
United India Insurance Co Ltd
Coimbatore ... Appellant /3rd Respondent

Vs

1. S.Shobia
2. A.Mary Arulmani
3. M.Palanichamy
4. V.Govindaraj
5. R.Nanjammal
6. Branch Manager
   United India Insurance Co.Ltd
   No.52, General Muthiah Mudali Street
   Chennai ... Respondents/Claimants& Respondents 1,2,4 & 5

(R3, R4,& R5 Exparte Before Lower Court)

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 15.11.2005 passed in M.C.O.P.No.149 of 2003 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Pollachi.

For Appellant : Mr.N.Vijayaraghavan

For Respondents: R1 & R2 - Mr.Ma.Pa.Thangavel
R3 to R5 - Exparte

J U D G M E N T

The legal representatives of one Sivakumar have filed the claim petition in MCOP No.149 of 2003, before the Motor Accident Claims Tribunal, Subordinate Court, Pollachi, seeking compensation of Rs.20,00,000/-. As against the claim made, the Tribunal awarded a sum of Rs.8,21,000/- with interest payable at the rate of 7.5% from the date of petition till the date of deposit.

2. It is the case of the 1st and 2nd respondents herein that on 24.09.2003, the deceased A.Sivakumar, aged 33, met a road accident at Ooty and died in the accident. The deceased Sivakumar was working as a lorry driver in Jothimani Transport and used to transport the goods from Coimbatore to Ooty and nearby places in Nilgiris. As a regular trip, on the date of accident, the deceased, as a spare driver, was returning in the lorry bearing Reg.No.TNV 3715, after unloading the goods. When the lorry came at Ooty to Coonoor Main Road, a tipper lorry bearing Reg.No. TN37 Q 7997 dashed against the said lorry and due to the impact of the accident, the deceased Sivakumar sustained grievous multiple injuries all over the body and subsequently he died.

3. The trial Court framed the following issues:-

- On whose negligence, the accident had happened?
- Whether the claimants are entitled to the compensation and if so, to what extent?

4. Before the Tribunal PWs 1,2, and 3 and Exs.P.1 to P.13 have been marked on the claimant side, but no evidence or documents have been examined / marked on the side of the appellant Insurance Company.

5. Heard both sides.

6.The learned Counsel for the appellant / Insurance Company submitted that the various heads of award arrived at by the Tribunal are not sustainable in consonance with the facts of the case.

7. To assess the said submission, this Court has to look into the parameters, on which the Tribunal has passed the award.

8. The Tribunal has taken note of the factum of accident and the proximate cause of accident between the two vehicles in question. While dealing with the same, the Tribunal has considered the Motor Vehicle Inspector's Report (Ex.P.2) and R.C. Book (Ex.P.10). Further, the Tribunal has relied upon the Copy of Insurance Policy (Ex.P.11), which establishes the fact that the vehicle in question was insured with the appellant herein and ultimately, fastened the liability on the part of the appellant herein.

9. The said finding rendered is based on materials available on record, which cannot be brushed aside easily by this Court without any documentary evidence by the appellant herein. This Court, sitting in the Appellate stage, in the absence of any new fact or evidence or error apparent on the face of the record, cannot re-appreciate the evidence and come

to a different conclusion other than the one, which the Tribunal has arrived at. Further, nothing prevented the appellant Insurance Company from examining any witness on their side or marking any documents, when they are the custodian of documents.

10. That apart, the quantum arrived at by the Tribunal is based on petition, counter, evidence and documents produced. In the absence of any contra documents or evidence available, it cannot now be permitted to say by the appellant herein, that the award passed is excessive and exorbitant. Further, the age, avocation and other aspects of the deceased was not either disputed or denied by the appellant herein before the Tribunal. Thus, all the circumstances would go to show that the award passed by the claims Tribunal is sustainable.

11. In such view of the matter, this Court comes to the conclusion that there is no ground to interfere with the judgment passed by the Tribunal below.

12. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant / Insurance Company herein 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. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimants / first and second respondents herein proportionately, through RTGS, within one week thereafter.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk / vrn

To

1. The Motor Accident Claims Tribunal/Subordinate Court
Pollachi.

Copy to:

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

+1cc to Mr.Ma.P.Thangavel, Advocate SR.53648
+1cc to Mr.M.B.Gopalan, Advocate SR.54644

C.M.A.No.3093 of 2008

SSI(CO)
CB(22/01/2020)