IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.07.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1223 of 2009

The Branch Manager,
United India Insurance Co.Ltd.,
No.66-68, Gandhi Road,
Kancheepuram. ... Appellant/2nd Respondent

Vs

1.P.Saritha
2.Annammal
3.Annamalai
4.P.Kothandam ...4th Respondent/
Ist Respondent

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 05.10.2007 made in MCOP No.259 of 2001 on the file of the Motor Accidents Claims Tribunal, Cheyyar.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.M.Rajendran for R1 to R3
Mr.K.G.Senthilkumar for R4

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.3,85,000/- towards compensation to the respondents 1 to 3, due to the death of the husband of the first respondent in a motor vehicle accident.

2.The case in brief, is as follows:

On 23.05.2001, the deceased Vinayagam was travelling in the bus bearing Reg.No.TN-21-J-3333 belonging to the fourth respondent and insured with the appellant Insurance Company, from to go to Cheyyar from Sadaiyeri. When the bus reached near Wireless Office of Papparanthangal Police Station, due to the rash and negligent driving of the driver of the bus, the bus capsized on the left side of the road. Due to the impact, the deceased sustained grievous injuries. He was immediately admitted in the Cheyyar Government Hospital and he died due to the injuries in the hospital. The legal heirs of the deceased filed a claim petition before the Tribunal claiming a sum of Rs.15,00,000/- as total compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,85,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in fixing the liability on the appellant Insurance Company when the fact remained that the deceased travelled in a goods vehicle. It is also submitted that the appellant has no liability for such passengers as per the settled legal position.

5.The learned counsel for the respondents 1 to 3 / claimants has submitted that the Tribunal has rightly considered the materials and evidence and has correctly fixed the liability on the part of the appellant Insurance Company and has awarded the just and fair compensation and hence the same need not be interfered with by 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 behalf of the Insurance Company before the Tribunal that the bus in question was not insured with the appellant Insurance Company and further the driver of the bus was not having the valid driving licence to drive the vehicle and hence the claim petition has to be dismissed. But it is seen that the Insurance Company had not let in any oral or documentary evidence to substantiate the said contentions. The Tribunal has observed that even though enough opportunities have been given, no oral or documentary evidence have been adduced by the Insurance Company to substantiate their claims. Relying upon Ex.P1-First Information Report, Ex.P3-Post Mortem Report and Ex.P4-Motor Vehicle Inspection Report, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus. After coming to such conclusion, the Tribunal has fixed the liability on the part of the appellant Insurance Company, since no oral or documentary evidence have been let in on the side of the Insurance Company to substantiate their claim or to disprove the contentions raised by the claimants. This Court is of the considered view that the Tribunal has correctly considered the materials and evidence and has correctly fixed the liability on the part of the Insurance Company, in the absence of any oral or documentary evidence let in, on the side of the Insurance

Company.

8.With regard to the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses, taken note of the II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded the compensation under various heads to the claimants. Further, this Court is of the considered view that the amounts awarded towards these heads are reasonable and justifiable and hence the same are confirmed.

9.In the result, the Civil Miscellaneous Appeal is dismissed. 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. On such deposit, the respondents 1 to 3 / claimants are permitted to withdraw the same, as apportioned by the Tribunal, on making proper application.

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

rk

To

1.The Motor Accidents Claims Tribunal
Cheyyar.

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

+1 cc to Mr.K.G.Senthil kumar Advocate sr64903
+1 cc to Mr.M.B.Gopalan Advocate sr65168

C.M.A.No.1223 of 2009

pp(co)
aa04/09/2020