IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2019

PRONOUNCED ON : 12.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.1187 OF 2011

1.Poongavanam
2.Suresh
3.Sudhakaran
4.Kanniammal ... Appellants

Versus

1. K.Kuppusamy

2. The Branch Manager,
United India Insurance Co.Ltd.,
28, Mailam Road,
Meenakshi Complex, 3rd floor,
Tindivanam. ... Respondents

Prayer :
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 15.09.2009 passed in MACTOP.No.166 of 2009 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.2, Additional District Judge, Dindivanam.

For Appellants : Mr.D.Bharatha Chakravarthy

For Respondents : No Appearance (for R1)

: Mr.D.Bhaskaran (for R2)

JUDGMENT

The claimants are the appellants herein, who have preferred this appeal, as against the award dated 15.09.2009 passed in MACTOP.No.166 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-Fast Track Court No.2, Dindivanam.

2.The brief facts of the case are as follows:-
On 10.05.2007 at about 6.45 am, the deceased one M.Gunasekaran called one Velu, driver of the Tractor bearing

Reg.No.TN-55-A-1722 from Jayankondan to Kadagampoondi to go to his job. Near Jayankondan River pathway, the Tractor driver Velu drove the vehicle in a rash and negligent manner, due to which, the deceased Gunasekaran fell down from the Tractor and he died on the spot. The Tractor was insured with the second respondent herein/Insurance company. There was no fault on the part of the deceased. The accident would have been avoided, if the Tractor driver Velu had driven the vehicle in a proper care and caution. The deceased was working as a Agriculturist and Labour coolie and he earned a sum of Rs.7,000/- per month. Therefore, the claimants have filed the claim petition in MACTOP.No.166 of 2009 claiming a sum of Rs.10,00,000/- as compensation.

3.The claim petition was resisted by the Insurance Company by contending that the first respondent's vehicle/Tractor, which was permitted to be used for agriculture purpose only, but the first respondent has not used the Tractor as per the conditions of the insurance policy. As per the permit condition, no person is allowed to travel in the tractor except the driver, on the wheel. Even there is no provision in the Tractor to travel any person. Hence, it is a clear violation of policy condition. Further, he contended that the deceased traveled in the Tractor as an unauthorized passenger. The owner of the Tractor is solely responsible for the accident, because the vehicle was intended for the use of agricultural purpose. But, the driver of the Tractor allowed the deceased to travel as unauthorized/gratuitous passenger. Therefore, the Insurance company is not liable to pay compensation to the claimants and prayed for dismissal of the claim petition.

4.Before the Tribunal, in order to sustain the claim, on the side of the claimants, the second appellant herein was examined as PW.1, one Ramu, occurrence witness was examined as PW.2 and four documents were marked as Exs.P1 to P4. On the side of the respondents, Ex.R1/Policy certificate copy was marked and no witness was examined.

5.Based upon the oral and documentary evidence of PW.1 and PW.2, it is seen that PW.1 is not in the scene of occurrence and as per the claim petition, the deceased was a pedestrian, while he coming at the lake bund, the Tractor was driven by its driver in a rash and negligent manner and dashed against him and the wheel of the Tractor ran over the body of the deceased. In connection with the incident, the first appellant herein (wife of the deceased) has came to know the information from the third party as hearsay and rushed to the accident spot. Consequently, she realized her husband died on the spot, out of the accidental injuries.

6.PW.2 is the occurrence witness, who depose that he knows the deceased (Gunasekaran) family. On the date of accident, PW.2 went to Jayakondan lake for natural call, at that time, the said Gunasekaran (deceased) was waking on the road and the above said Tractor come in a rash and negligent manner and dashed against him and the wheel of the Tractor ran over. Due to the impact, the deceased thrown out and died on the spot itself.

7.The Tribunal taking into consideration of Ex.P1/FIR given by one poongavanam (the wife of the deceased) wherein it is stated that her husband was sitting in the Tractor and due to rash and negligent driving of the driver of the Tractor, he fell down from the Tractor and the wheel was ran over, as a result he died on the spot. Accordingly the Tribunal held that the deceased traveled in the Tractor, which was insured with the second respondent/Insurance company only for the purpose of agricultural use not for carrying passengers for hire or reward or gratuitous travel. The Tribunal further held that the vehicle was used against the terms and conditions of the Insurance company and contraventions of the provisions of the Motor Vehicles Act. The Tribunal considered the specific plea raised by the Insurance company that they cannot be made liable and only the first respondent is responsible to pay the compensation to the victims and the Insurance company, it has to be absolved from its liability, as no premium has been collected by the Insurance company towards the passengers or any person or employee and the deceased was not under the coverage of policy as per the terms and conditions Ex.R1/ copy of Insurance policy. Therefore, the Tribunal decided that the Insurance company is not liable to pay compensation to the family members of the deceased.

8.As regards quantum, the Tribunal has taken the notional income of the deceased at Rs.3,000. After deduction of 1/3 amount towards personal expenses, arrived at Rs.24,000/- (Rs.3000 - 1/3 = Rs.2000 x 12) and adopted multiplier '15' towards pecuniary loss, which was arrived at Rs.3,60,000/- (Rs.24000 x 15). The Tribunal also awarded other compensation along under the conventional heads and in all awarded at Rs.3,69,500/-. Aggrieved by the fact that the Tribunal had exonerate the Insurance Company from their liability to pay compensation, the claimants have come up with this present appeal and seeks enhancement also.

9.I have heard the submissions made by the respective counsel and perused the materials available on record.

10.On a perusal of the Ex.P1/FIR, it is mentioned that while the deceased was travelling in the Tractor, due to rash and negligent manner of driver, he fell down from the Tractor and the wheel of the Tractor ran over on the body and he died on the spot. On a close scrutiny of Ex.P1/FIR, it is seen that the wife of the deceased, Poongavanam has given the complaint. But it remains to be stated that as per the contention of Ex.P1/FIR, when she was at home, she heard the news from a third person about the accident and went to scene of accident and fromthere, she came to know about the manner of the accident and the death of her husband. Accordingly, she gave a complaint based on which the FIR was seems to be registered. In other words, the complaint was given by poogavanam (the wife of the deceased) on the basis of hearsay evidence, which could be seen from the contents of the Ex.P1/FIR .

11.Thus, this court is of the considered view that the Tribunal has not properly appreciated the contents in the FIR and the information was furnished in the FIR were not witnessed by the wife of the deceased. At the risk of repetition, however, for the sake of clarity, it has to be said that Poogavanam was not present in the scene of occurrence and nor witnessed the alleged accident. The death was informed to her by the third party and she ran to the spot of the accident and thereafter based upon the hearsay news, she logged the police complaint, based on which Ex.P1/FIR was registered. Taking into consideration of the deposition of PW.2, occurrence witness and his evidence remained un-shattered and in absence of any contra evidence let in by the Insurance company, the findings of the Tribunal that the deceased traveled in the Tractor is liable to be vacated as the deposition of PW.2 inspire the confidence of this Court. Besides that PW.1 gave the complaint on the basis of hearsay witness. Accordingly, findings of the Tribunal that the Insurance company is not liable to pay the compensation is also hereby set aside.

12.This Court is of the considered view that the factum of accident and manner of accident was witnessed by PW.2 viz., the deceased was walking along with road as pedestrian, the Tractor dashed against him and ran over on his body. This Court holds the manner of the accident, which has spoken by PW.2 appears to be reasonable and believable. Taking note of the fact that in Ex.P1/FIR is based on the hearsay witness and the terms and conditions of the policy being an Act Policy, as on the date of the accident, the policy extends coverage to a third party. In view of the fact that on the date of accident, the Insurance policy was valid and as the deceased was a pedestrian, being the third party, the Insurance company and the owner of the offending vehicle are jointly and severally liable to pay the compensation to the claimants. In such view of the matter, the findings rendered by the Tribunal is hereby set aside.

13.On the point of quantum of compensation, after going through Ex.P1/FIR , it is just and fair compensation awarded by the Tribunal and the same is hereby confirmed. Hence, the findings of the Tribunal exonerating the Insurance company from the liability to pay compensation is hereby set aside and the appeal is liable to be allowed.

14.In the result, this Civil Miscellaneous Appeal filed by the appellants herein is allowed as against the second respondent/Insurance Company Limited. The Owner of the vehicle and the Insurance Company are jointly and severally liable to pay the compensation and they are directed to pay the compensation amount of Rs.3,69,500/- as awarded by the Tribunal, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The respondents are directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the appellants/claimants are permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Accidents Claims
   Tribunal Fast Track Court No.2,
   Additional District Judge, Dindivanam.

2. The Section Officer,
   V.R.Section, High Court, Madras - 104.

+1cc to M/s.Sai Bharath, Advocate, S.R.No.36733
+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.36958

C.M.A.No.1187 of 2011

RV(CO)
CS/29/01/2020