IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3741 of 2008
& M.P.No.1 of 2008

The United India Insurance Co. Ltd.,
Chennai ... Appellant/Petitioner/2nd Respondent

..vs..

1. Seetha
2. Sundaravadanam
3. Parthasarathy
4. Shanthi
5. G.S.C. Bose ... Respondents/Respondents/Petitioners

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 02.07.2008 made in M.P.No.1265 of 2006 in M.C.O.P.No.1015 of 2000 on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small causes Court) at Chennai.

For Appellant : Mr. R. Ravichandran

R1 : died

For R2 to R4 : No appearance

J U D G M E N T

The case in brief, is as follows:

On 30.12.1998 at about 10.00 hours, the deceased Krishnasamy Iyengar was riding his bicycle in the Irusappa Gramani Street, Ice House, Chennai from South to North direction. At that time, the water tanker lorry bearing Reg.No.TN-09-C-5214, belonging to the fifth respondent and insured with the appellant Insurance Company, came from behind in a rash and negligent manner and knocked down the bicycle. Due to the said impact, the deceased sustained grievous injuries and he later succumbed to the injuries. The legal heirs of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.2,00,000/- as total compensation. The Tribunal, based on the evidence and the documents adduced, fastened the liability on the Insurance Company/appellant herein and quantified the compensation at

Rs.1,34,500/- with interest at the rate of 7.5% per annum from the date of petition, payable by the appellant herein. The appellant, aggrieved over the same, has preferred the present appeal.

2.Despite service of notice, there is no representation on behalf of the respondents 2 to 4. Further, the appellant has not taken proper steps to implead the legal heirs of the first respondent even at this length of time. However, due to paucity of time, this appeal is taken up for final disposal on merits.

3.The learned counsel for the appellant has submitted that the Tribunal has failed to note that the appellant cannot be made liable to pay the compensation to the claimants, when the risk was covered only from the next day of the accident and in any event, the Tribunal ought to have granted a right of recovery from the owner of the vehicle, if not completely exonerated. However, the learned counsel has not disputed the quantum of compensation awarded by the Tribunal.

4.Heard the learned counsel for the appellant and perused the records.

5.The finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the tanker lorry, is not in dispute. Even though the Insurance Company has denied the policy of insurance and its validity with regard to the lorry in question, before the Tribunal, no evidence was adduced to substantiate the same. Considering the facts and circumstances of the case, the Tribunal came to the conclusion that there was valid policy of insurance at the time of accident and accordingly passed the impugned judgment. It is also seen that a miscellaneous petition in M.P.No.1265 of 2006 was filed before the Tribunal to recall the award passed in MCOP No.1015 of 2000 on the ground that there was no policy coverage on the date of accident, ie., 30.12.1998 and that the insured himself has agreed in the proposal form to commence the risk from 31.12.1998. The Tribunal dismissed the said petition holding that there was gross negligence seen on the side of the Insurance Company staff in not pursuing the case properly and not defending the case effectively. Further, the Tribunal has held that even though the case was listed for trial on 09.02.2004 and was running in the claimants' evidence stage till 05.01.2005 and the opportunity for the Insurance Company was wide open till 13.09.2005, the Insurance Company was not vigilant and prudent to verify the contentions and the details furnished in the claim petition and that such prudent act and diligence was missing on the part of the Insurance Company. The Tribunal has also observed that for no fault of the claimants, after 8 long years after the claim petition was preferred, they could not be penalised at that length of time. This Court is of the view that the Tribunal has dealt with the matter in proper perspective and had directed the appellant Insurance Company to pay the compensation to the claimants. Hence, this Court is not inclined to interfere with the same.

6.Since the learned counsel for the appellant has not disputed the quantum of compensation, the compensation awarded by the Tribunal at Rs.1,34,500/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

7.In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No costs. The appellant / Insurance Company 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 respondents 1 to 4 / claimants are permitted to withdraw the same, as apportioned by the Tribunal, on making proper application.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk/smn

To

1.The Motor Accident Claims Tribunal,
(IV Judge, Court of Small causes Court)
Chennai.

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

+1cc to Mr.R.Ravichandran, Advocate SR.67921

C.M.A.No.3741 of 2008
& MP No.1 of 2008

RSV(CO)
CB(11/09/2020)