IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.4032 of 2008
and
M.P.No.1 of 2008

The Branch Manager,
Oriental Insurance Co. Ltd,
Madurai. .. Appellant /2nd Respondent

Vs.

1. Bakkkiam
2. Suresh
3. Parimala ... Respondents 1 to 3/Petitioners
4. Muthukrishnan .. 4th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.08.2006 made in M.C.O.P.No.230 of 2005 on the file of the Motor Accidents Claims Tribunal, District Court, Nagapattinam.

For Appellant : Mr.S.Arun Kumar
For R2 to R4 : No Appearance

J U D G M E N T

This appeal is preferred by the appellant Insurance Company against the Judgment and Decree dated 31.08.2006 made in M.C.O.P.No.230 of 2005 on the file of the Motor Accidents Claims Tribunal, District Court, Nagapattinam (for brevity, "the Tribunal").

2.The case in brief, is as follows:

On the fateful day, ie. on 17.12.2004, at about 10.00hours, one Dakshinamurthy had travelled in the tractor bearing Registration No. TDB 8823 belonging to the fourth respondent herein and insured with the appellant insurance company. When the said vehicle was nearing Natham Kudiyana Theru at Thittacherry Village on Thittachery - Natham road, due to rash and negligent driving by its driver, the said Dhakshinamurthy was thrown away from the vehicle and the right side wheel of the vehicle ran over him. Due to the said impact, he sustained fatal injuries and died on the spot. Hence, his legal heirs filed a claim petition claiming a compensation of Rs.6,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,40,000/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company submitted that the fourth respondent/owner of the Tractor has violated the policy condition by permitting the deceased to travel in the vehicle and the insurance policy covers only the driver of the vehicle; and the tractor has been insured only to use it for agricultural purpose and hence, the Insurance Company is not liable to pay any compensation to the claimants. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Even though this appeal was admitted way back in the year 2008, the appellant insurance company has not taken proper steps to serve papers to the respondents/claimants. However, considering the fact that the appeal is of the year 2008, this Court is inclined to proceed with the appeal on merits.

6.The appellant Insurance Company has denied its liability to pay compensation to the respondents/claimants contending that in violation of the policy condition, the deceased had travelled in the tractor unauthorisedly and the tractor was used for non-agricultural purposes. To substantiate the said contention, R.W.1, Development Officer of the appellant insurance company was examined and Exs.R1-insurance policy and R2-notice given by the insurance company to the owner of the tractor were marked. However, the Tribunal, taking note of the fact that Ex.R1 policy covered both the driver and the third party and there was no specific clause with regard to usage of the vehicle only for agricultural purpose, has rightly rejected the contentions raised on the side of the appellant insurance company and ultimately, fastened the liability on them, which finding this Court is not inclined to interfere.

7.As regards the quantum of compensation, P.W.2/son of the deceased, has deposed that the deceased was aged about 50 years and was working as mason, besides doing agricultural work and earning a sum of Rs.6,000/- per month, but no authenticated document was filed to prove the same. In the absence of any material evidence, the Tribunal has taken the monthly income of the deceased as Rs.3,000/-, deducted 1/3rd towards personal expenses, arrived at the annual income at Rs.24,000/-, adopted the multiplier of 13 and quantified the compensation under the head "loss of income" at Rs.3,12,000/- [Rs.24,000 x 13]. The Tribunal has correctly analyzed the income of the deceased, adopted the correct multiplier and arrived at the said sum towards the contribution of the deceased to the family and hence, the same is hereby confirmed. Further, the Tribunal has awarded Rs.8,000/- towards funeral expenses and transport to hospital, Rs.10,000/- towards loss of consortium to the wife of the deceased, Rs.5,000/- each towards loss of love and affection to the children/claimants 2 and 3, which are just and reasonable and hence, the same are hereby confirmed. That apart, there is no modification with regard to the rate of interest at 7.5%pa awarded by the Tribunal.

8.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant insurance company shall deposit the award amount with interest and costs, as ordered by the 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 3 are permitted to withdraw their respective shares of the compensation amount as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Admin II)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
District Court, Nagapattinam.

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

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 52971

C.M.A.No.4032 of 2008
&
M.P.No.1 of 2008

RSI(CO)
GN(07/02/2020)