

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2019

CORAM :

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

CMA.No.2467 of 2011

and

MP.No.1 of 2011

The Divisional Manager,
Oriental Insurance Co.Ltd.,
Divisional Office,
No.1, Katpadi Road,
Vellore - 632 004.

... Appellant/2nd respondent

Versus

1.B.Anitha
2.Dinesh (Minor)
3.D.Rajamani
4.Jagadha ...Respondents 1 to 4/Claimants 1 to 4
5.M/s.Ramkumar Traders,
Rep.by its Business Partner,
No.47/18-A, Arcot Road,
Satuvachari, Vellore -9.
6.M.A.Deepak
7.The Divisional Manager,
National Insurance Company, Ltd.,
Divisional Office,
No.19, Officer's Line,
Opp. to Lakshmi Theatre,
Vellore-1. ... Respondents 5 to 7/
Respondents 1,3&4
(R2-Minor represented by mother & natural friend R1)

[R5 & R6 ex-parte in Lower Court
and hence, notice may be dispensed with]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 31.12.2010 made in M.C.O.P.No.47 of 2006 on the file of the Motor Accidents Claims Tribunal (Additional District & Sessions Court), Fast Track Court, Vellore.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : No Appearance (for R1 to R4)
: R5 & R6 - Notice dispensed with
: Mr.J.Chandran (for R7)

J U D G M E N T

The Oriental Insurance company limited is the appellant herein, which has filed this appeal questioning the liability as well as quantum of compensation directed to be paid by them to the claimants.

2. On 27.02.2004, at about 07.30 hours, while one Kumar was driving the Fiat Car bearing Regn.No.TN-23-E-4329, with one Babu as the occupant, a Lorry bearing Regn.No.KA-05-B-4619, which belongs to the sixth respondent and insured with the seventh respondent, driven by its driver in a rash and negligent manner hit against the Car causing fatal injuries to Kumar & Babu, who died on the spot. In view of the said accident, the claimants, who are the legal heirs of the deceased Babu filed the claim petition in MCOP.No.47 of 2006 claiming compensation of Rs.12 Lakhs. This MCOP was taken along with the MCOP filed by the legal heirs of the deceased Kumar (Driver of the Car).

3. The Insurance company resisted the claim petition by disputing the age, income and other details furnished by the claimants in the claim petition and prayed for dismissal of the claim petition.

4. Before the Tribunal, common evidence was let in and on the side of the claimants side, four witnesses were examined as PW.1 to PW.4 and as many as twenty seven documents being Exs.P1 to P27 were marked. On the side of the respondents, RW.1/Private Investigator, RW.2/Law officer of the Insurance company, RW.3/Sr.Assistant of National Insurance company and RW.4/Private Investigator were examined and Exs.R1 to R18 were marked.

5. The Tribunal conducted joint trial and delivered common judgment, holding that the driver of the Car was negligent and dismissed MCOP.No.33 of 2006. In MCOP.No.47 of 2006, for the death of the occupant (Babu) the Tribunal awarded a sum of Rs.6,84,000/- as compensation and directed the owner of the offending vehicle and the appellant herein/Insurance company to jointly and severally pay the compensation to the victims/claimants. Hence, the appeal.

6. I have heard counsel for the respective parties and perused the materials on record and the award of the Tribunal.

7. The Tribunal considering the materials available on record including the oral evidence adduced by both sides, came to conclusion that the driver of the car, drove in rash and negligent manner and colluded head on with lorry and in my considered opinion, has rightly arrived at a finding that the deceased Kumar, who was the driver of the car was responsible for the accident. The said finding, which has been arrived at based on Exs.R1 to R18, does not warrant any interference. In

as much as the said finding is not challenged by the legal heirs of the deceased Kumar and is not challenged either by the Insurance company, the said aspect need not be considered in the present appeal.

8. Insofar as the claimants of the deceased Babu, with which, this Court is concerned in this appeal, the Tribunal considered the deposition of PW.4/wife of the deceased Babu and finally took the monthly income of the deceased as Rs.3,000/- and after all the deductions and applying multiplier '18', considering the age of the deceased as 28 years arrived at compensation of Rs.4,32,000/- [Rs.2000 x 12 x 18]. To this, the Tribunal added a sum of Rs.1,00,000/- towards loss of love and affection; a sum of Rs.1,00,000/- towards loss of estate; a sum of Rs.2,000/- towards funeral expenses; and a sum of Rs.50,000/- towards loss of consortium to the first claimant/wife and which was arrived at Rs.6,84,000/- and the same does not warrant any interference and the same is hereby confirmed.

9. In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance company is dismissed by confirming the Judgment and Decree dated 31.12.2010 made in M.C.O.P.No.47 of 2006 on the file of the Motor Accidents Claims Tribunal Additional District & Sessions Court, Fast Track Court, Vellore.

(i) The Insurance Company is directed to deposit the amount as determined by the Tribunal together with interest 7.5%, after adjusting amount, if any, already deposited within a period of eight weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the claimant is entitled to withdraw the same with accrued interest, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD-IV)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Presiding Officer, Motor Accidents Claims Tribunal
(Additional District & Sessions Court),
Fast Track Court, Vellore.

+1cc to Mr.J.Chandran, Advocate SR.40027
+1cc to Mr.N.Vijayaraghavan, Advocate SR.39447

CMA.No.2467 of 2011
and
MP.No.1 of 2011

VD (CO)
CB(12/02/2020)