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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.03.2019

Pronounced on : 11.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2521 of 2011

and

MP.No.1 of 2011

The New India Assurance Co.Ltd.,
(Tirunalveli - 627002) ... Appellant/2nd Respondent

Versus

1.Malarkodi
2.Minor. Mathesh
3.Minor. Vignesh
4.Panchalai ...1 to 4 Respondents/Petitioners
5.Kannan
6.Danushkodi ... 5 & 6 Respondents/1 & 3 Respondents

[R6 set exparte before the Tribunal and notice is dispensed with]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 22.01.2009 made in MCOP.No.88 of 2003 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Attur.

For Appellant : Mr.G.Udayasankar

For Respondents : Mr.L.Rajendran (for R1 to R4)
: No Appearance - R5
: Exparte - R6

JUDGMENT

The Insurance company is the appellant herein, Challenging the award dated 22.01.2009 passed in MCOP.No.88 of 2003 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Attur, on the ground of liability as well as quantum.



2.The first respondent is the wife of the deceased and the second and third respondents are offspring of the deceased and the fourth respondent is the mother of the deceased. The legal representatives of the deceased have filed the above said MCOP.No.88 of 2003, claiming compensation for the death of one Raja.

3.The brief facts of the case are that on 24.10.2001, at about 3.00 am, when the deceased and others were travelling in the goods carrier of Mini Lorry namely Swarajmazda, bearing Registration No.TN-72-F-2171 from Palayankottai to Attur, after completing the cable laying work at Tirunelveli along with their equipments, with the consent of the said lorry owner, while the lorry was proceeding near Tirunelveli to Kovilpatti at Settikurichi Vilakku Road, the driver/Danushkodi drove the said lorry in a rash and negligent manner and capsized on the right hand side of the road. In the impact, the deceased Raja sustained grievous injuries all over the body and he died on the spot itself. The deceased/Raja left behind his beloved wife, children and mother. At the time of accident, he was working as Mason for cable laying work, earning a sum of Rs.4,500/- per month. Therefore, the legal heirs of the deceased filed the claim petition, claiming a sum of Rs.5,12,750/- as compensation.

4.The fifth respondent herein is the owner of the vehicle and he has stated that the sixth respondent/driver/Danushkodi had caused the accident and because of, whose negligence, the lorry was capsized and due to the accommodation of goods on the vehicle, the deceased/Raja travelled in the said vehicle and sustained greivous injuries and died.

5.The appellant/Insurance company had filed a counter statement alleging that at the time of accident, the vehicle was driven by one Balasubramaniam, whose name was mentioned in the FIR. But, subsequently in the charge sheet, the name of the driver was mentioned as Danushkodi. At the time of accident, including the deceased, 25 persons travelled in the said vehicle. After completing the cable laying work at Tirunelveli along with one Chakkaravarthy, contractor, they all travelled in the goods carrier, Mini Lorry, with the consent of the lorry owner. Hence, both the vehicle owner and the driver have committed violation of policy conditions and the Motor Vehicles Act. Hence, the appellant/Insurance company seeks to exonerate them from the liability to pay the compensation to the claimants.

6.During the time of trial, the first respondent/legal representative of the deceased was examined as PW.1 and one occurrence witness was examined as PW.2. and Ex.P1 to P6 documents were marked. On the respondetns side, the owner of the lorry was examined as RW.1. On behalf of the Insurance Company,



a staff was examined as RW.2 and Ex.R1 & R2 documents were marked.

7. After analysing the oral and documentary evidence, the Tribunal has held that at the time of accident, the sixth respondent herein/the driver of the vehicle, who had driven the offending vehicle in a rash and negligent manner, which resulted in capsizing the lorry and due to the impact of the accident, the injured/Raja died on the spot and it was further held that he is the person engaged by the owner of the vehicle to accompany the materials. Hence, the Tribunal observed that the appellant/Insurance company is liable to pay the compensation of Rs.4,38,250/- to the claimants. Aggrieved by the same, the appellant/Insurance company has come up with this present appeal.

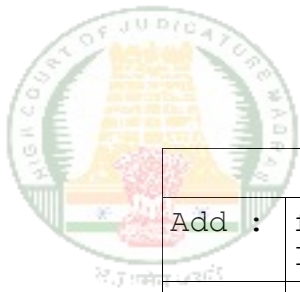
8. I have heard both sides and perused the materials available on record.

9. It is seen that after the accident, the FIR was registered immediately before the Nalattin Pudur Police Station. Subsequently, the case was re-registered, within the Jurisdictional Police Station at Chittoor Police Station. A confusion arose in the name of the driver, i.e., Balasubramaniam or Danushkodi, at the time of accident. Hence, the FIR did not properly mention the correct name of the driver. As per the Investigation, it was found that the driver, who had driven the lorry absconded. Hence, after it was re-registered at Jurisdictional Police Station of Chittoor Police station, the correct name of the driver was mentioned in the charge sheet as Danushkodi.

10. It could be seen from the evidence of RW.1/ the owner of the lorry that Danashkodi, driver of the offending vehicle pleaded guilty and paid fine before the concerned Judicial Magistrate's Court. Hence, the Tribunal has come to the conclusion that at the time of accident, Danushkodi was the driver of the lorry and the accident has taken place due to his rash and negligent manner of driving. The said finding of the Tribunal is hereby confirmed. As such, the same does not suffer from any illegality or irregularity warranting to interference by this Court, at this appellate stage.

11. With regard to quantum of the compensation, it is useful to refer the policy copy produced by the Insurance company and the same is extracted hereunder:-

Schedule of Premium		
B :	LIABLITY TO PUBLIC RISK	
Less :	20% if the vehicle is used for carriage of own goods.	Rs.2779.00



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Schedule of Premium		
Add :	for L.L to Non-Fare Paying Passengers as I.M.T.13.	Rs.50.00
Add :	for L.L to persons employed in Connection with the operation and / or Maintaining and / or unloading of Motor Vehicle I.m.t.17	Rs.45.00 (2 DR/1CR)
Add :	for Increased third party property damage limits Section if - 1(II) Upto Rs..... I.M.T.20.	Rs.75.00
Add :	6 Coolies @ 15/-	Rs.90.00
Total	(O.D. + Liabillity) (A+B)	Rs.11049.00
Less :	5% Special Discount (if due)	Rs.555.00
	Total	Rs.10344.00
Add:	5% Service Tax	Rs.527.00
	Net Permium (rounded off)	Rs.11071.00

12. According to the terms of Policy and Payment Schedule, relating to Non-fare paying passenger, the extra premium had been paid and the extra premium was also paid for six coolies for loading and unloading and for two drivers as well. As such, the person, who died in the accident is engaged by one owner to accompany the goods, which is under the policy coverage. Hence, this Court is of the considered view that the factum and the nature of the policy and the person, who died in the above said accident, is duly covered in the policy as per the terms and conditions of the policy and hence, the Insurance company is liable to pay compensation to the claimants and the similar finding rendered by the Tribunal in that regard is found to be well merited and well considered. Hence, the appeal is liable to be dismissed on the ground of quantum also.

13. Accordingly, the Civil Miscellaneous Appeal is dismissed. The award of the Tribunal is hereby confirmed.

(i) The appellant/Insurance company is directed to pay the compensation amount Rs.4,38,250/- after deducting the amount if already deposited by them, as awarded by the Tribunal, within a period of twelve weeks from the date of receipt of a copy of this Judgement.

(ii) On such deposit being made, the claimants are entitled to withdraw their award share amount as awarded before the Tribunal, by moving appropriate application, as per the direction given by the Tribunal along with interest and costs. With regard to the share of the minor respondents 2 & 3, the observation of the Tribunal is hereby confirmed.



(iii) Consequently, the connected miscellaneous petition is closed. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

klt

To

- 1.The Motor Accident Claims Tribunal (Subordinate Court), Attur.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to M/s.G.Udayasankar, Advocate Sr.47796

+1cc to M/s.L.Rajendran, Advocate Sr.47385

C.M.A.No.2521 of 2011

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srg 16/10/2019