IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.3181 of 2011 and
M.P.No.1 of 2011

The Oriental Insurance Co. Ltd.,
Kumbakonam. ...Appellant

Vs.

1.Muthayee
2.Muthuselvam (died)
3.Sendhil Kumar
4.Karunanithi
5.Minor Sankar
6.Minor Poongal
(Minors 5 and 6 rep. by its mother and
NF first respondent)
7.Ponnammal (died)
8.A.Arunagirinathan
9.K.Sampath
(Respondents 1, 3 to 6 are recorded as the
legal representatives of the deceased respondents
2 and 7, vide order of the Court, dated 19.09.2011,
made in M.P.No.1 of 2007 in CRP.SR No. 1341 of 2007
(Memo filed on 08.09.2011, Memo SR.No. 5705 of 2011)
...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 30.09.2005, in M.C.O.P.No. 924 of 2000, on the file of the Motor Accidents Claims Tribunal, District Judge, Perambalur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.N.C.Ashok Kumar for R1, R3 to R6
R2 and R7 - died
R8 - No appearance
R9 - Exparte

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Oriental Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 924 of 2000, on the file of the Motor Accidents Claims Tribunal, District Judge, Perambalur. They have filed the present appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal.

2. For the sake of convenience, the parties are referred to, as mentioned in the claim petition.

3. The brief case of the claimants is as follows:

(i) The first claimant is the wife of the deceased, the second to the fifth claimants are the sons of the deceased, the sixth claimant is the daughter of the deceased and the seventh claimant is the mother of the deceased. It is brought to the notice of this Court that, the second and the seventh claimants have already been died.

(ii) The deceased was aged 40 years on the date of the accident. He was working as a agricultural labour, earning a sum of Rs.3,000/- per month.

(iii) On the request of one Balasubramanian of Maruvathur, Thiruvarur District, the second claimant, the deceased Thangavel, and about 18 people went to harvest paddy. The harvested paddy was in the house of Sendhilkumar Valangaiman. All the above said persons loaded the paddy in the mini lorry bearing Registration No. TN 49 Y 7282 (Vinno mini lorry), at about 10.00 pm, on 07.02.1998. Thereafter, they all travelled in the said mini lorry along with the load. When the said mini lorry was nearing Varanavasi, the driver of the said mini lorry was so rash and negligent in his driving and the claimants 1, 2 and 3 shouted to go slow. Due to the rash and negligent driving of the driver of the said mini lorry, near Pillayarkoil, it uncontrollably went to the left side and dashed against a tamarind tree.

(iv) As a result of the accident, the second claimant and the deceased Thangavel sustained multiple grievous injuries and they were admitted in the Government Hospital Ariyalur for treatment. Subsequently, they were referred to Tanjore Medical College and Hospital. The deceased Thangavel was admitted in the Tanjore Medical College and Hospital from 08.02.1998 to 23.03.1998. Though, treatment was given to him in the hospital, he survived only for one month, after which, he died in the village of Asur, due to the injuries sustained by him, in the accident.

(v) According to the claimants, the accident was purely due to the rash and negligent driving of the driver of the said mini lorry. The first respondent is the owner of the said mini lorry and the third respondent is its driver. The said mini lorry was insured with the Oriental Insurance Company Limited, who is the second respondent. It is the case of the claimants, that since, the deceased died in the accident caused by the mini lorry bearing Registration No. TN 49 Y 7282, all the respondents are jointly and severally liable to pay a sum of Rs.8,00,000/- to them.

4. The third respondent, the driver of the mini lorry bearing Registration No. TN 49 Y 7282 was absent before the Tribunal, and therefore, he was set ex-parte. The Oriental Insurance Company Limited and the owner of the said lorry contested the claim petition. Before the Tribunal, the Insurance Company filed a counter statement denying the alleged age, avocation, income of the deceased and also contended that the deceased travelled in the said mini lorry as an unauthorized passenger.

5. During the trial, the wife of the deceased was examined as PW1 and an eye witness to the occurrence of the accident was examined as PW2 and exhibits P1 to P5 were marked. On the side of the Insurance Company, a staff of their company was examined as RW1 and exhibits R1 to R4 were marked. Taking into consideration, the oral and documentary evidences adduced before the court, the Tribunal has held that the accident has taken place due to the rash and negligent driving of the driver of the said mini lorry. The Tribunal has also held that, since, the deceased travelled in the said mini lorry as a representative of the goods, he is not a gratuitous passenger and therefore, the claimants are entitled to compensation. Based upon the Insurance Policy (Ex.R3), the Tribunal has held that the Insurance Company along with the other respondents are jointly and severally liable to pay compensation to the claimants and awarded a sum of Rs.2,97,500/- together with interest at the rate of 9% per annum. Aggrieved over the said orders passed by the Tribunal, the Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard both sides.

7. A perusal of the records shows that, at the time of the accident, 18 persons travelled in the said mini lorry and it is represented by the learned counsel appearing for the Insurance Company that, there was only one claim considered by the Tribunal, out of the said accident. Furthermore, the

deceased was an agriculturist who travelled in the goods vehicle as the owner of the paddy bags. As per the section 147 (1) of the Motor Vehicles Act, 1988 (as amended), for a person who is travelling as the owner of the goods in the vehicle, the Insurance Company is liable to pay compensation. I am of the considered view that, the contention raised by the Insurance Company has no substance in view of the clear terms of the Insurance Policy (Ex.R3). Accordingly, the said contention of the Insurance Company is hereby rejected and the orders passed by the Tribunal, in this regard, is upheld. Hence, the Insurance company is liable to pay compensation to the claimants.

8. Quantum of compensation: The Tribunal has rightly considered all the evidences adduced before the court, in this regard. In the absence of any proper evidence to prove the income and age of the deceased, the Tribunal fixed the income as Rs.1,500/- per month and adopted multiplier of 16 and awarded a sum of Rs.2,88,000/-. The Tribunal has also awarded a sum of Rs.2,500/-, Rs.5,000/- and Rs.2,000/- towards 'loss of estate', 'loss of consortium' and 'funeral expenses' respectively. Taking into consideration, the year in which the accident took place, I find that the compensation awarded by the Tribunal is reasonable and just, and hence, the same is hereby confirmed.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The orders passed by the Tribunal is upheld.

(iii) The appellant - Insurance Company is directed to deposit the compensation awarded by the Tribunal, i.e., Rs.2,97,500/- (if not already deposited) together with interest at the rate of 9% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No. 924 of 2000, dated 30.09.2005, on the file of the Motor Accidents Claims Tribunal, District Judge, Perambalur within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the claimants 1, 3 and 4 are permitted to withdraw the same, as per the orders passed by the Tribunal, in the manner known to law. The apportionment granted by the Tribunal shall be kept intact.

(v) The fifth and sixth claimants are minor, and therefore, their share of compensation amounts are ordered to be deposited in any one of the nationalized bank, until they attain majority, and the first claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

(vi) The second claimant has already died and the same was also recorded by the Tribunal in its order. Now, it is represented that the seventh claimant also died. Therefore, her share of compensation is ordered to be given to the first claimant. The first claimant is at liberty to withdraw her share together with the share of the seventh claimant, in the manner known to law.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Mbi

To

1. The Motor Accidents Claims Tribunal,
   Th District Judge,
   Perambalur.

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

+ 1 CC to Mr.N.Vijayaraghavan, Advocate vide SR No.24338

+ 1 CC to Mr.C.Jagadish, Advocate vide SR No.23890

C.M.A.No.3181 of 2011 and
M.P.No.1 of 2011

CNR(CO)
GMY(03/06/2019)