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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.119 of 2015

and

M.P.No.1 of 2015

The Divisional Manager,
M/s. United India Insurance
Company Limited,
D.O. 13A, Nethaji Road,
Cuddalore 1.

Appellant/Resondent-III

Vs

1.R.Rajathilagam ..Respondent I/Petitioner

2.The Correspondent,
Parani Nursery and Primary School,
Periyapattu,
Chidambaram Taluk. ..Respondent II/Respondent I

3.R.Tamilarasi .. Respondent III/Respondent II

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in M.C.O.P.No.1296 of 2010 dated 07.01.2014 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge Court, Cuddalore District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.R.Sreedhar for
M/S.Sretthi Law firm for R1
NA for R2 & R3

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the decree and Judgment passed in M.C.O.P.No.1296 of 2010 dated 07.01.2014 on the file of the learned Motor Accident Claims Tribunal, II Additional Subordinate Judge Court, Cuddalore District. The appeal has been preferred by the United India Insurance Company Limited, aggrieved against the award made by the Tribunal at Rs.1,04,960/- against the claim of Rs.5,00,000/-.



2. The brief case leading to the claim petition is that on 23.11.2009, at about 09.15 hours, when the claimant/first respondent was travelling in the second respondent's school van bearing Registration No. TN 31 P 1909 along with the students, in Chidambaram to Cuddalore road, near paravanaru bridge, driven by its driver in a great speed and negligent manner and it went to the road side succumbed and capsized, as a result of which, the claimant/first respondent herein sustained fracture and multiplier injuries. Immediately, he was admitted in the Government Headquarter Hospital, Cuddalore. Thereafter, he was shifted to Private Hospital, Cuddalore for further treatment. Due to the said fact, the claimant/first respondent met with lot of sufferings including loss of income, permanent disability, pain and sufferings, Medical expenses and other related sufferings.

3. The Insurance Company totally denied the allegations made in the claim application. The appellant/Insurance Company further contended that the driver of the said van have a valid driving license with badge at the time of the accident. Further, a valid permit and registration certificates are also denied by the appellant/Insurance Company. Apart from that, it is contended by the appellant/Insurance Company that the second respondent van carrying 42 persons at the time of the accident as against the permitted capacity of 12 + 1, which is clear violation of Motor Vehicle Act as well as the policy conditions. The other aspects relating to the claim made by the claimants are highly excessive.

4. The Tribunal after analysing the evidence and documents placed before the same, regarding the negligence and given up finding that the accident occurred only due to the rash and negligent driving on the part of the driver of the second respondent's van. While determining the compensation, the Tribunal has observed Ex.P3/ Accident Register, Ex.P4/ Discharge Summary, period of treatment and also by verifying the disability sustained by the claimants and awarded a sum of Rs.1,04,960/-, under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	permanent disability at 10% (35% x Rs.2,000)	70,000.00
2.	Medical expenses	14,960.00
3.	Pain and sufferings	10,000.00
4.	Extra nourishment	5,000.00
5.	Transportation	5,000.00



S.No	Head	Compensation (in.Rs.)
Total		1,04,960.00

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5. Aggrieved against the said award, the appellant/Insurance Company has preferred this appeal for questioning the quantum of compensation awarded by the Tribunal. In the ground of the appeal, the appellant/Insurance Company contended that the award passed by the Tribunal is highly excessive, exorbitant and unsustainable. Ex.P1/ First Information Report reveals the fact that at the time of accident, the said school van carrying 42 students and due to reckless driving, capsized resulting the death of one person. Hence, against the seating capacity of 13, the driver of the van carried 29 students which is violation of policy, conditions. Therefore, the owner alone is liable to pay the compensation to the claimants. Hence, the appellant/Insurance Company sought for dismissal of the award passed by the Tribunal.

6. Heard, Mr.J.Chandran, learned counsel appearing for the appellant/ Insurance Company, Mr.R.Sreedhar, learned counsel for the first respondent and there is no appearance on behalf of the second and third respondents.

7. On hearing both sides and perusing all the records, it is observed that the accident occurred on 23.11.2009, the claimant/first respondent has deposed before the Tribunal that the said van went to the road side succumbed and capsized. Even though, there is a total violation of policy, the appellant herein failed to prove the same by adducing proper oral or documentary evidence. Thus, the Tribunal has rightly fastened the liability on the owner and insurer of the said van, in which, this Court do not warrant any interference.

8. P.W.2 also examined on the side of the claimant, who gave the Disability Certificate at the rate of 35%. It is also observed that there is fracture on the right radius. The Tribunal by verifying the period of treatment underwent by the claimant from 23.11.2009 to 30.11.2009, considered the disability as 35% and awarded Rs.2,000/- per percentage and calculated as Rs.70,000/- (Rs.2,000/- x 25%) and the sum awarded towards medical expenses at Rs.14,960/- is also based on the Ex.P7, which is very much reasonable. The other aspects such as Pain and sufferings, extra nourishment and funeral expenses are properly considered by the Tribunal, hence, this court is not inclined to interfere with the award of the Tribunal and the award passed by the Tribunal is confirmed.



9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. The appellant and the third respondent are directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant, forthwith, through RTGS.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Motor Accidents Claims Tribunal,
The II Additional Subordinate Judge Court,
Cuddalore District.

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

+1cc to Mr. J. Chandran, Advocate SR.61360
+1cc to Mr. R. Sreedhar, Advocate SR.60308

C.M.A.No.119 of 2015
and
M.P.No.1 of 2015

VBA(CO)
CB(10/01/2020)