IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.323 of 2015
and
M.P.No.1 of 2015

Branch Manager,
M/s.New India Assurance Company Limited,
Branch Office, IInd Floor, 2/91,
New Bus Stand Road, Meyyanur,
Salem - 636 004. ... Appellant/3rd Respondent

Vs.

1.Palaniammal
2.Visalatchi
3.Minor.Ramamoorthy ...Respondents 1 to 3/Petitioner 1 to 3
4.Nagaraj ...Respondent 4/Respondent 1
5.Thiruvenkadam ... Respondent 5/Respondent 2

(Minor third respondent represented by mother and natural guardian, first respondent herein)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.06.2014 made in M.C.O.P.No.391 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mr.J.Chandran

For RR 1 to 3 : Mr.V.Kumaravelan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 30.06.2014 made in M.C.O.P.No.391 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

2.The appellant is the third respondent in M.C.O.P.No.391 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. The respondents 1 to 3 filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the death of one Arjunan, who died in the accident that took place on 01.02.2009.

3.According to respondents 1 to 3/claimants, on 01.02.2009 at about 11.00 P.M., while the deceased was travelling in the tractor belonging to the second respondent and driven by the first respondent on Athipadi - Naripalli road, the first respondent applied sudden brake and caused the accident. Due to the said accident, the deceased succumbed to injuries in the hospital on 07.02.2009. Therefore, the respondents 1 to 3/claimants filed claim petition claiming a sum of Rs.5,00,000/- as compensation against the respondents 4, 5 and appellant-Insurance Company being the driver, owner and insurer of the tractor respectively.

4.The appellant-Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 3/claimants. At the time of accident, the fifth respondent was not the owner of the tractor and he sold the tractor to a third party and Insurance Policy was transferred to the favour of the purchaser. At the time of accident, the deceased was seated on the left side mudguard and another two persons seated on the right side mudguard of the tractor. At the time of accident, for safer travelling, the driver of the tractor applied sudden break and due to the jerk, the deceased fell down from the mudguard of the tractor. The deceased was intoxicated at the time of accident. The deceased died only due to his own negligence and the seating capacity of the tractor is only for the driver of the tractor. The deceased travelled in violatin of permit and policy condition and the driver of the tractor also not having valid driving license at the time of accident. The owner of the tractor used the vehicle for commercial purpose, but the policy obtained for agricultural purpose. Therefore, the owner of the tractor also violated the policy conditions. In any event, the total compensation claimed by the respondents 1 to 3/claimants is highly excessive and prayed for dismissal of the claim petition.

5.Respondents 4 and 5 remained exparte before the Tribunal.

6.Before the Tribunal, the first respondent examined herself as P.W.1 and one Sankar was examined as P.W.2 and five documents were marked as Exs.P1 to P5. On behalf of the respondents 4, 5 and appellant, one Sudandararaj was examined as R.W.1 and copy of the insurance policy was marked as Ex.R1.

7.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the tractor belonging to the fifth respondent and directed the respondents 4, 5 and appellant jointly and severally to pay a sum of Rs.7,09,500/- as compensation to the respondents 1 to 3 / claimants.

8.Challenging the said award dated 30.06.2014 made in M.C.O.P.No.391 of 2013 fastening liability on the appellant-Insurance Company as well as quantum of compensation awarded to the claimants, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the deceased traveled in the mud guard of the tractor belonging to the fifth respondent and died due to injuries sustained by him. At the time of accident, the deceased was in intoxicated condition. The Insurance policy issued by the appellant-Insurance Company covers only the driver of the tractor and it does not cover any of the passenger. The deceased alone fell down from the tractor due to his own fault. The tractor is insured for agricultural purpose and owner of the tractor had used the same for commercial purpose in violation of Policy condition. The owner and driver of the tractor alone are liable to pay the compensation for violation of policy condition. In any event, the amounts awarded by the Tribunal is excessive and prayed for setting aside the award passed by the Tribunal.

10.Heard the learned counsel appearing for the appellant-Insurance Company as well as respondents 1 to 3 and perused the entire materials on record.

11.From the materials available on record, it is seen that the first respondent examined herself as P.W.1 and one Sankar, eye-witness examined as P.W.2. Both P.W.1 and P.W.2 have stated that deceased was traveling in the tractor as a coolie and accident occurred due to applying of sudden brake by the driver of the Tractor. The appellant examined one Sudandararaj as R.W.1, and he admitted in cross examination that at the time of accident paddy bags were in the tractor. The appellant has not let in any evidence to prove that deceased was traveling in mud guard of the tractor and was in intoxicated condition. Similarly the appellant has not let in any rebuttal evidence to show that deceased was not a coolie and was a gratuitous passenger at the time of accident. The Tribunal considering the above facts, rightly held that the appellant-Insurance Company is liable to pay the compensation to the respondents 1 to 3/claimants. There is no error or perversity in the finding of the Tribunal warranting any interference by this Court.

12.As far as quantum of compensation is concerned, the respondents 1 to 3 in the claim petition have contended that the deceased was aged 50 years and was an agriculturist and coolie and was earning a sum of Rs.5,000/- per month. Except oral evidence, no document was produced by the respondents 1 to 3 to substantiate their claim. In the absence of any document to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.6,000/- as notional monthly income of the deceased. The accident occurred in the year 2009 and the monthly income fixed by the Tribunal is not excessive. The Tribunal considering the entire materials on record has awarded a sum of Rs.7,09,500/- as compensation to the respondents 1 to 3/claimants, which is just compensation. There is no error in the award passed by the Tribunal warranting interference by this Court.

13.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.7,09,500/- awarded by the Tribunal as compensation to the respondents 1 to 3 claimants, along with interest and costs is confirmed. The appellant-Insurance Company and the respondents 4 and 5 are jointly and severally directed to deposit the award amount together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.391 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. On such deposit, the respondents 1 and 2 are permitted to withdraw their respective share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor third respondent is directed to be deposited in any one of the Nationalized Bank, till he attains majority. On such deposit, the first respondent, being the mother of the minor third respondent is permitted to withdraw the accrued interest once in three months, for the welfare of the minor third respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

+1cc to Mr.S.Angamuthu, Advocate Sr.101345
+1cc ot Mr.J.Chandran, Advocate Sr.101749

C.M.A.No.323 of 2015

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