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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM:

THE HON'BLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN,

Civil Miscellaneous Appeal No.629 of 2012

The United India Insurance Company Ltd., ... Appellant/3rd respondent

..Vs..

1.Babu
2.Pachiappan
3.Madhammal
4.Govindammal
5.Indirani
6.Lakshmi
7.Kannammal
8.Madheiyan
9.R.Murugan
10.C.Senthilkumar

... Respondents/Claimants 1 to 8 and 1st &2nd respondent
(Respondents 9&10 are Exparte in the Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988 against the judgement and decree dated 24.03.2010 made in MCOP No.246 of 2009 on the file of the Motor Accident Claims Tribunal(Principal District Judge), Dharmapuri.

For Appellant : Mr.J.Chandran
For Respondents : Mr.S.Chinnasamy for RR1 to 8
RR9 & 10-set ex-parte

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J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgement and decree dated 24.03.2010 made in MCOP No.246 of 2009 on the file of the Motor Accident Claims Tribunal(Principal District Judge), Dharmapuri, challenging the amount awarded by the said Tribunal against the claim of Rs.7,00,000/-.

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2. The claimants are the wife and the children of the deceased one Ponnusamy. The case of the claimants is that the deceased was an Agricultural Cooli and was earning a sum of Rs.6000/- per month. That on 07.09.2008, at about 7.30 a.m, the deceased Ponnusamy was standing in Kurinji Nagar Bus Stop in Dharmapuri-Salem Road, a car bearing Registration No.50-Z-5206, which was driven by the second respondent's driver, came in a rash and negligent manner and dashed against the deceased. As a result of the accident, the deceased sustained injuries in legs, head and chest. Immediately, he was taken to Government Medical College Hospital, Dharmapuri and admitted as inpatient. In spite of continuous treatment given to the deceased, his physical condition became serious and he died on 13.11.2008 at Dharmapuri Government Medical College Hospital and postmortem conducted thereon. The respondents/claimants 1 to 8, who are the wife and children of the deceased have been put to great hardship as the deceased is the only breadwinner of the family. The 9th respondent was the actual owner of the car. But on 07.01.2008, the R.C., of the said car was transfered to the 10th respondent. Therefore, the 10th respondent is the owner of the vehicle. The 9th respondent has taken the Insurance Policy with the appellant/3rd respondent. Therefore, the respondents 1 to 8 claimed compensation from them.

3. The appellant/3rd respondent filed a counter statement denying all the allegations as false, frivolous, vexatious and not maintainable. It is also denied that the manner and the cause of the alleged accident and they did not agree with the contention that the accident occurred due to rash and negligent act of the driver of the car. It stated in the counter that the driver of the said car, who did not expect the sudden negligent act of the deceased, turned his car with his best efforts to avoid alleged accident. It is also stated in the affidavit that 9th and the 10th respondents have not informed about the transfer of ownership, which is in violation of provisions of Motor Vehicles Act. Therefore, the appellant/3rd respondent has not liable to pay compensation.

4. To prove their case, on the side of the respondents 1 to 8/petitioners, two witnesses were examined and Ex.A1 to A5 were marked. Out of two witnesses, PW2 is the eye-witness. On the side of the appellant/third respondent, neither any document has been filed nor any witness has been examined to prove their case. The Court below, after considering all the factors and on perusal of the case records, has come to the conclusion that accident was occurred due to the rash and negligent act of the driver of the 9th respondent and the respondents therein are jointly and severally liable to pay the compensation to the petitioners therein/respondents 1 to 8 herein.

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5. The Tribunal considered the age of the deceased and also his avocation, has given findings that the monthly income of the deceased as Rs.4000/- per month and accordingly, fixed the annual income of the deceased as Rs.40000/-. It is also seen on going through the case records that petitioners 3 to 5 therein have already married and living in their husband's house. They are not depending upon the income of the deceased. Therefore, the petitioners 3 to 5 therein are not entitled to any relief. Hence, out of the 8 petitioners therein, only 5 petitioners are entitled to the compensation. The Court below has rightly fixed the income of the deceased per day is Rs.200/- as an Agricultural Coolie and in all days Agricultural work will not be taken up. As such, for 20 days per month alone have taken into account for calculating the monthly income of the deceased as Rs.4000/- per month. Accordingly, a sum of Rs.48,000/- has been fixed as the annual income of the deceased. Therefore, out of the said sum i.e,. Rs.48000/-, 3/4th of the amount was deducted for the monthly expenses and 1/4th amount has been deducted for personal expenses. Multiplier has been taken as 11 and fixed the loss of dependency of the deceased family as Rs.3,96,000/- and medical expenses for a sum of Rs.38,440/- and a sum of Rs.5000/- each for loss of love and affection and towards Transport expenses a sum of Rs.5000/-. Accordingly, the total compensation awarded was a sum of Rs.4,69,440/-.

6. Aggrieved over by the said order, the appellant/third respondent therein has filed this Civil Miscellaneous Appeal stating that respondents 1 & 2 therein, who are the owners of the vehicle i.e., the 9th respondent herein has sold the vehicle to the 10th respondent herein. The transfer of the said vehicle has not been informed to the appellant/third respondent Insurance Company. The Insurance Policy also stands in the name of the 9th respondent herein and 9th and 10th respondents herein alone are liable to pay the compensation and the same was informed to the authorities within the time limit and hence, the appellant/third respondent Insurance company is not liable to pay any compensation when it is found that even though there was some change in ownership, the policy covers the said period. Accordingly, who ever might be, the policy covered only the said vehicle and as such, the appellant herein cannot escape its liability and the compensation to be paid and it is also found that the award amount fixed by the Court below is just and reasonable and this Court find no reasons to interfere with the said award passed by the said Tribunal and awarding the compensation to the claimant/petitioners 1,2,6 to 8 in the claim petition i.e., 1,2,6 to 8 the respondents herein.

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7. However, the award amount if any already not deposited by the Insurance Company, shall deposit the same within a period of 6 weeks from the date of receipt of a copy of this order. The respondents/claimants can withdraw the said sum by filing an appropriate petition before the Tribunal.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Judge ,
Motor Accident Claims Tribunal
Dharmapuri.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to Mr.J.Chandran , Advocate SR.No. 100845
+1cc to Mr.S.Chinnasamy , Advocate SR.No. 100598
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