IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.771 of 2013
& M.P.No.1 of 2013

The Divisional Manager,
National Insurance Co.Ltd.,
74A, Paramathi Road,
Namakkal Taluk & District. ... Appellant/2nd Respondent

..vs..

1. Pappayee
2. Saraswathi
3. Hema (minor)
4. Anadhu (minor) ...Respondents 1 to 4/Claimants 1 to 4
(Minors are represented by
Mother/Next friend Saraswathi)
5. Vadugan Varadarajan ...5th Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree, dated 23.12.2011 made in M.C.O.P.No.305 of 2009 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal.

For Appellant : Mr. S.Arunkumar

For Respondents : Mr.M.Selvam for R1 to R4
: Mr.S.Vasudevan for R5

J U D G M E N T

This Civil Miscellaneous Appeal is preferred as against the award passed by the Claims Tribunal in M.C.O.P.No.305 of 2009 dated 23.12.2011.

2. Brief facts of the case are as follows:

On 23.02.2007, at about 04.45 p.m., the deceased Shanmugam was moving his TVS 50 two-wheeler on the extreme right side of the Velur - Mohanur Main Road. At that time, the Tanker Lorry bearing Registration No.TN-28-J-8574, belonging to the fifth respondent and insured with the appellant Insurance Company, driven by its driver in a rash and negligent manner, came from behind and dashed on the back of the deceased Shanmugam. Due to the said impact, the deceased fell down, sustained grievous injuries on his head and died on the spot. The legal heirs of the deceased filed a claim petition before the Claims Tribunal claiming a sum of

Rs.10,00,000/- as compensation. Considering the materials and evidence available on record, the Tribunal has awarded a sum of Rs.7,40,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the present appeal has been preferred by the appellant Insurance Company.

4.The learned counsel for the appellant /insurance company has submitted that the Tribunal has erred in granting a huge sum of Rs.7,40,000/- as compensation against the appellant, in spite of the fact that the owner of the Tanker Lorry/ 5th respondent herein has willfully violated the policy conditions. He further submitted that the Tribunal failed to note that unless the vehicle has been used according to the terms and conditions of policy and Motor Vehicle Act and Rules, the Insurance Company cannot be fastened with any liability.

5.Per contra, the learned counsel for the respondents 1 to 4 as well as the learned counsel for the fifth respondent/owner of the vehicle Tanker Lorry, submitted that the Tribunal has properly analysed the evidence and documents in a detailed manner and rendered reasonings on negligence as well as the quantum and hence, the same need not be interfered with by this Court.

6.Heard the learned counsel on either side and perused the materials and evidence available on record.

7.As far as the negligence aspect is concerned, the Tribunal has taken note of Ex.P.1-FIR and Ex-P.4 Charge Sheet and the evidence of P.W.s.1 and 2 and has held that the accident had occurred due to the negligent driving of the driver of the Tanker Lorry, which finding is not disputed by both sides. Though it was put forth on behalf of the Insurance Company before the Tribunal that the driver of the Tanker lorry was only having LMV licence and not having HMV and badge and hence the Insurance Company is not liable to pay any compensation, the Tribunal has held that even if the driver is not having proper licence, the persons using the vehicle without proper licence can be criminally prosecuted under the Motor Vehicles Act, but there is no such prosecution found as if the driver drove the vehicle without proper licence. Observing so, the Tribunal fastened the liability on the owner of the tanker lorry and the appellant Insurance Company, being the insurer of the tanker lorry. The contention put forth by the Insurance Company that the driver of the tanker lorry was not having the valid driving licence to drive Heavy Motor Vehicle, was not properly dealt with by the Tribunal. The fact remained that the driver was not possessing licence to drive Heavy Motor Vehicle, but the Tribunal has held that even if the driver is not having proper licence, the persons using the vehicle without proper licence can be criminally prosecuted under the Motor Vehicles Act, but there is no such prosecution found as if the driver drove the vehicle without proper licence. It is clear that the driver of the tanker lorry was not possessing valid licence to drive Heavy Motor Vehicle. Therefore, there was violation of policy conditions. In the circumstances, this Court deems it fit to direct the appellant Insurance Company to pay the compensation and thereafter recover the same from the owner of the tanker lorry, in accordance with law.

8.With regard to the quantum of compensation, even though the claimants have stated that the deceased was earning a sum of Rs.10,000/- per month as tailor, in the absence of documentary evidence, the Tribunal has fixed the monthly income of the deceased at Rs.5,000/-, adopted the multiplier of 17, deducted 1/3rd of the amount towards personal expenses of the deceased and arrived at the sum of Rs.6,80,000/- towards loss of dependency. Further, towards Love and Affection, a sum of Rs.40,000/- was awarded, towards Funeral Expenses a sum of Rs.10,000/- was awarded and towards loss of consortium a sum of Rs.10,000/- was awarded. The Tribunal has correctly fixed the monthly income of the deceased, adopted the correct multiplier and arrived at the compensation towards loss of dependency and hence, the same need not be interfered with by this Court. The amounts awarded towards other heads are also very reasonable and hence the same are also confirmed.

9.In the result, the Appeal is partly allowed. Consequently, the connected miscellaneous petition is closed. No costs.

10.The appellant is directed to deposit the compensation amount with interest and costs, as ordered by the Tribunal, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The respondents 3 and 4 would have attained majority by now. Hence, on such deposit being made, the respondents 1 to 4 are permitted to withdraw the same on making proper application before the Tribunal. Thereafter, the Insurance Company shall proceed against the owner of the tanker lorry, the fifth respondent herein, for recovery of compensation, in the manner known to law.

Sd/-
Assistant Registrar(CO MDU)

//True copy//

Sub Assistant Registrar

srk / vv

To

1.Motor Accidents Claims Tribunal,
Principal District Judge,
Namakkal.

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai 104

+1cc to Mr.M.Selvam, Advocate SR.No.66943

+1cc to Mr.S.Arunkumar, Advocate SR.No.67643

C.M.A.No.771 of 2013
& MP No.1 of 2013

SR(CO)
GMY(10/11/2020)