IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NOS.90 & 2125 OF 2018
AND
C.M.P.NO.1242 OF 2018

C.M.A.No.90 of 2018

National Insurance Company Ltd.,
2nd Floor, 81-D, Chetty Street,
Tiruchengode, Namakkal District.
... Appellant/2nd Respondent

vs.

1.Mohanapriya
2.Minor Naveenkumar
3.Angammal
4.Mani .. Respondents 1 to 4/Petitioners 1 to 4
5.Ranganathan ...5th Respondent/1st Respondent/Respondent

(R2 Minor Rep.Through his mother and Next Friend 1st Respondent)

C.M.A.No.2125 of 2018

1.Mohanapriya
2.Minor Naveenkumar
3.Angammal
4.Mani ... Appellants/Petitioners

(Minor Petitioner No.2 is rep.by her Next Friend Guardian/Mother Mohanapriya)

vs.

1.Ranganathan

2.National Insurance Company Ltd.,
2nd Floor, 81-D, Chetty Street,
Tiruchengode, Namakkal District.
... Respondents/Respondents

Prayer:-

Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.06.2017 made in M.A.C.T.O.P.No.21 of 2009 on the file of the Motor Accident Claims Tribunal, Sankagiri (Subordinate Court,) Sankagiri.

For Appellant
in CMA 90/18
For 2^{nd} respondent
in CMA 2125/18 : Mr.S.Vadivel

For Respondents
in CMA 90/2018
& For Appellants
in CMA 2125/18 : Mr.C.Paranmeedharan
for R1 to R4

R5 - exparte in CMA 90/18
R1 - exparte in CMA 2125/18

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Inasmuch as both the appeals arise out of the same award passed by the Tribunal with the one questioning the liability and the quantum and the other seeking enhancement, they have been taken up together and disposed of by way of common order.

2.For the sake of brevity, the parties as arrayed in C.M.A.No.90 of 2018 are taken as such.

3.It is the case of the respondents 1 to 4 being the claimants that the tempo traveller van bearing Regn. No.TN 28 R 5413 was driven in a rash and negligent manner causing the death of one Srinivasan, who was travelling in the same. Respondents 1 to 4 are the legal representatives of the aforesaid person. A claim petition has been filed in M.C.O.P. No.21 of 2009 seeking a sum of Rs.10 lakhs as compensation along with interest.

4.The appellant is the insurer of the fifth respondent. The appellant before the Tribunal contended that the deceased was an unauthorised gratuitous traveller and therefore, it is not liable to pay any amount since the policy concerned did not cover the same. Incidentally, the quantum has also been challenged. The Tribunal after holding that it is true that the deceased was an unauthorised traveller and therefore gratuitous, nonetheless the principle of pay and recovery will have to be adopted. Challenging the same, C.M.A.No.90 of 2018 has been filed. Seeking enhancement of compensation, the claimants have filed C.M.A.No.2125 of 2018.

5.We have heard the learned counsel appearing for the parties. The fifth respondent was set exparte before the Tribunal.

6.Learned counsel appearing for the appellant/insurer submits that in view of the finding by the Tribunal that the deceased travelled unauthorisedly and thus a gratuitous traveller, the principle governing pay and recovery ought not to have been adopted. Though the claimants sought for Rs.10 lakhs, the Tribunal awarded Rs.22,61,000/-. Therefore, the award requires interference.

7.Learned counsel appearing for the claimants submitted that the Tribunal has correctly followed the principle of law. The fact that the deceased was travelling in the vehicle coupled with the further fact that the respondents are the legal heirs are not in dispute. The Tribunal is well within its power to grant higher compensation. Though the finding of the Tribunal with respect to liability has not been specifically challenged, it is still open to the respondents to question the same in this appeal. As the Tribunal has not considered the relevant materials, the appeal filed by the claimants will have to be allowed by granting enhanced compensation.

8.We find considerable force in the submission made by the learned counsel for the appellant in C.M.A.No.90 of 2018. Admittedly, the deceased was an unauthorised traveller. The policy concerned does not cover such a person. The Tribunal thus rightly held that he was a gratuitous traveller. That being the position, the liability ought not to have been fastened on the appellant. In such a case, the question of pay and recovery would not arise as the very policy itself does not mandate any payment. Thus, no responsibility to pay the compensation can be fixed upon the appellant. Therefore, the question of pay and recovery would not arise in the case on hand.

9.However, we find that a reading of Section 147 of the Motor Vehicles Act, 1988, an employee during the course of employment travelling in a vehicle belonging to the employer which has been insured is entitled for compensation. This entitlement is subject to the rider that it has to be paid only under the Workmen Compensation Act, 1923 and therefore though the appellant in C.M.A.No.90 of 2018 is not liable to pay the compensation under the provisions of the Motor Vehicles Act, 1988, it cannot escape the same in the light of Section 147 of the Motor Vehicles Act, 1988. Thus, the liability to pay under the Workmen Compensation Act, 1923 is still in existence.

10.Before the Tribunal, the claimants claimed a sum of Rs.10 lakhs. If the compensation is calculated as per the Workmen Compensation Act, 1923, which is applicable to the fatal accident cases the following would be relevant:

Formula to be applied in fatal accident cases

50/100x relevant factor x salary

Age	..	26 years
Relevant factor	..	215.28
Salary	..	Rs.4,000/- (The maximum salary under Section 4 explanation II (a)(b) on the date of accident 10.03.2008)

Proposed Award

50/100 x 215.28 x Rs.4000/-	..	Rs.4,30,560.00
12% interest on the award amount from 30 days after the date of accident i.e. 10.03.2008 till the date of deposit 9.4.2008 to 16.02.2018 (3601 days)	..	Rs.5,09,736.00
		===============
		Rs.9,40,296.00
		===============

11.Accordingly, respondents 1 to 4/claimants are entitled for a sum of Rs.9,40,296/-. We would like to add Rs.5,000/- towards funeral expenses. Thus the total compensation is arrived at Rs.9,45,296/-, which is rounded off to Rs.10 lakhs, which as stated, was the amount sought for by the claimants in the claim petition filed. We are not awarding any interest since the interest has already been calculated by us as aforesaid. The said amount has to be apportioned amongst the claimants in the same ratio as ordered by the Tribunal.

12.The contention of the learned counsel for respondents 1 to 4/claimants with respect to enhanced compensation stands rejected. As we have calculated the amount payable under the Workmen Compensation Act, 1923, the claimants are not entitled for any compensation under the provisions of Motor Vehicles Act, 1988. This is also for the reason that we are in agreement with the finding of the Tribunal with respect to the status of the deceased insofar as the policy and the insurer of the vehicle are concerned.

13.In such view of the matter, the appeal in C.M.A.No.90 of 2018 stands allowed by modifying the award of the Tribunal to Rs.10 lakhs. Consequently, the appeal filed by the claimants in C.M.A.No.2125 of 2018 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.The appellant insurance company is directed to deposit the reduced compensation now awarded by this Court, less the amount if any already deposited, to the credit of M.A.C.T.O.P.No.21 of 2009 on the file of the Motor Accident Claims Tribunal, Sankagiri (Subordinate Court,) Sankagiri, within a period of eight weeks from the date of receipt of a copy of the judgment.

15.We also direct the Tribunal to transfer the respective shares of claimants 1, 3 and 4 by way of RTGS to their respective bank accounts within a period of three weeks from the date of deposit of the award amount. On such transfer, claimants 1, 3 and 4 are entitled to withdraw the same. Insofar as the share of the minor second claimant is concerned, the same shall be deposited in any one of the nationalised banks till he attains majority. The first claimant/mother of the minor second claimant is entitled to withdraw the interest accrued on the minor's deposit once in three months directly from the bank.

16.We make it clear that the accrued interest, after the deposit, for the sum of Rs.10 lakhs, will have to be given in favour of respondents 1 to 4/claimants till the date of withdrawal. Similarly, the appellant in C.M.A.No.90 of 2018 is permitted to withdraw the excess amount, if any.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Motor Accident Claims Tribunal,
   Sankagiri (Subordinate Court,)
   Sankagiri.

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

+2cc to Mr.S.Vadivel, Advocate, S.R.No.104313 & 104314
+2cc to Mr.C.Paranmeedharan, Advocate, S.R.No.104557

C.M.A.Nos.90 and 2125 of 2018

PM(CO)
CS/19/10/2020