IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.4491 of 2019
and
C.M.P.No.25389 of 2019

M/s.Reliance General Insurance Co. Ltd.,
Rai's Tower II Floor, Plot No.2054,
II Avenue, Anna Nagar,
Chennai - 600 040. ...Appellant/2nd Respondent

Vs

1.Leelavathi

2.Tamiul Selvi

3.G.Vasudevan

4.Minor Y.Monishraj
(minor represented by his natural
guardian/mother Leelavathi.
Minor impleaded as per order in
M.P.No.4364/2014 dated 19.12.2014)

5.S.John Abraham ... Respondents/Petitioners & 1st respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.04.2019 made in M.C.O.P.No.1298 of 2014 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For appellant : Mr.S.Arunkumar
For Respondents: Mr.K.Suryanarayanan

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JUDGMENT

[Judgment was delivered by R.SUBBIAH,J]

By consent, the appeal is taken up for final disposal.

2. Challenging the judgment dated 16.04.2019 made in M.C.O.P.No.1298 of 2014 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, directing the appellant insurance company to pay compensation to respondents 1 to 4/claimants indemnifying the owner of the vehicle/fifth respondent, the present appeal has been filed.

3. Respondents 1 to 4/claimants, as legal heirs of the deceased Yuvaraj, filed M.C.O.P.No.1298 of 2014 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, seeking compensation in a sum of Rs.75,00,000/-. The case of respondents/claimants before the Tribunal is that on 14.12.2014 at about 3.30 p.m. while the deceased was walking on the left side of the road, a Lorry bearing Registration No.TN-09-AB-3622, owned by fifth respondent, insured with the appellant insurance company, came in a rash and negligent manner and dashed against the deceased from behind as a result of which the deceased sustained grievous injuries and met his instantaneous death.

4. The claim was resisted by appellant insurance company stating that the driver of the Lorry did not have a valid driving license at the time of accident. Therefore, appellant insurance company is not liable to pay compensation indemnifying the owner of the Lorry/fifth respondent.

5. In order to prove their case, first respondent examined herself as PW-1 besides examining PWs.2 to 4 and marked exhibits P1 to P30. On the side of appellant insurance company, its official has been examined as RW-1 and three documents were marked.

6. The Tribunal, after analysing the evidence adduced on both sides, has fixed the monthly income of the deceased at Rs.20,000/-, applied multiplier ‘17’ as the age of the deceased was 30 at the time of accident, added 40% towards future prospects and deducted 1/4th towards personal expenses and awarded a total sum of Rs.44,04,000/- as compensation. The break-up details are as follows:

(a) Loss of dependency	:	Rs. 42,84,000/-
(b) Loss of love and affection	:	Rs. 50,000/-
(c) Loss of consortium	:	Rs. 40,000/-
(d) Loss of estate	:	Rs. 15,000/-
(e) Funeral expenses	:	Rs. 15,000/-
		Rs.44,04,000/-

7. The Tribunal, taking note of the evidence of RW-1 to the effect that the unladen weight of the Lorry is only 6080 kgs and that the driver had a license to drive a LMV, arrived at a finding that there is no violation of policy condition. Hence, the Tribunal directed the appellant insurance company to pay the compensation with interest at 7.5% p.a. indemnifying the owner of the Lorry/fifth respondent. Aggrieved over such finding, the present appeal has been filed.

8. Heard learned counsel for appellant insurance company and learned counsel for respondents 1 to 4/claimants. Perused the materials on record.

9. It is no doubt true that as on the date of accident, the driver of the offending vehicle was having a license to drive a LMV, but, it did not contain an endorsement to drive transport vehicles. In the said circumstance, in our opinion, the same is violation of policy condition. The Tribunal ought to have directed the appellant insurance company to pay the compensation amount by permitting them to recover the said amount from the owner of the vehicle. Instead of doing so, the Tribunal has directed the appellant insurance company to pay the compensation indemnifying the owner of the vehicle. For the aforesaid reason, the impugned judgment warrants interference by this Court.

10. Accordingly, while upholding the compensation of Rs.44,04,000/- awarded by the Tribunal, this Court directs the appellant insurance company to pay the compensation and recover the same from the owner of the vehicle. The appellant insurance company is directed to deposit the compensation with interest, less if any deposited, within a period of eight weeks from the date of receipt of this judgment. Deposit of sum payable to the minor and withdrawal of interest thereon once in three months towards meeting the needs shall be effected as directed by the Tribunal. Further, deposit of Rs.6,00,000/- out of the amount awarded to first respondent and withdrawal of interest thereon once in three months shall be effected as directed by the Tribunal. Respondents 1 to 3/claimants shall be entitled to

withdraw the sums payable to them on due application as apportioned by the Tribunal.

The Civil Miscellaneous Petition, accordingly, is disposed of. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

gm

To
The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

+1 cc to Mr.S.Arunkumar Advocate sr100094
+1 cc to Mr.K.Suryanarayanan Advocate sr99733

C.M.A.No.4491 of 2019

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