IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.09.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1905 of 2017 and C.M.P.No.10217 of 2017
and
C.M.A.No.1371 of 2017

C.M.A.No.1905 of 2017:

M/s.United India Insurance Company Ltd.,
Motor Third Party Claims-Hub
Sillingi Buildings, No.134, Greams Road,
Chennai-600 006. ... Appellant/ Respondent2

Vs

1.K.Alagu
2.Minor K.Thulasimani
3.Minor A.Gunamathi
4.Minor A.Govindaraj
5.A.Kandan Konar
6.K.Nachammal
(Minor respondents rep.by their father,
the first respondent herein).

7.K.Rajesh ...Respondents/ Petitioner 1 to 6&1st respondent
(R1&7 absent&exparte before the Tribunal)

C.M.A.No.1371 of 2017:

1.K.Alagu
2.A.Thulasimani - Minor
3.A.Gunamathi - Minor
4.A.Govindaraj - Minor
5.A.Kandan Konar
6.K.Nachammal
(Minor appellants rep.by their father,
the first appellant herein). ... Appellants/ Petitioners

Vs

1.K.Rajesh

2.United India Insurance Company Ltd.,
Motor Third Party Claims HUB
Silinghi Buildings, No.134, Greams Road,
Chennai-600 006. ... Respondents/ Respondents

Appeals filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.02.2017 made in MCOP No.7023 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant in CMA 1905/2017
and R2 in CMA 1371/2017 : Mr.G.Udaya Sankar

For R1 to R6 in CMA 1905/2017
and appellants in CMA 1371/2017 : Mr.M.Swaminathan

COMMON JUDGMENT

The case in brief, is as follows:

On 23.09.2013 at about 12.30 hours, the deceased Chellam was travelling in the TATA ACE vehicle bearing Reg.No.TN-55-AB-0888 belonging to the seventh respondent and insured with the appellant Insurance Company in CMA No.1905 of 2017, from West to East direction in the Viralimalai - Pudukottai Main Road. When the vehicle was proceeding near Mother Therasa Engineering College, Illuppur, due to the rash and negligent driving of the driver of the vehicle, the vehicle turned turtle resulting in fractures and injuries to several persons including the deceased. The deceased was taken to the Thanjavur Medical College and Hospital and she later on succumbed to the injuries in the hospital. The legal heirs of the deceased filed a claim petition before the Tribunal, claiming a sum of Rs.23,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.17,91,340/-, rounded off to Rs.17,92,000/- with interest at the rate of 7.5% per annum from the date of petition.

2.Challenging the same, the Insurance Company has filed the appeal in CMA No.1905 of 2017 and the claimants have filed the appeal in CMA No.1371 of 2017.

3.The learned counsel for the Insurance Company has submitted that the Tribunal ought to have exonerated the liability on the part of the Insurance Company to pay the compensation, since the person who drove the vehicle is an unauthorised person to drive such vehicle and he was not having valid driving licence at that time. It is also submitted that during the time of accident, the vehicle was carrying 23 passengers, violating the policy conditions, which resulted in the death of a person and injuries to many others. Stating so, the learned counsel prayed for exonerating the Insurance Company from making payment of compensation to the claimants. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

4.The learned counsel for the respondents 1 to 6 in CMA No.1905 of 2017 / appellants in CMA No.1371 of 2017, has submitted that even though the deceased was working as Agricultural Coolie, during off-seasons, she was working as Chithal and earned about Rs.12,000/- to Rs.15,000/- per month and hence the Tribunal has erred in arriving at the monthly income of the deceased at Rs.6,500/-. It is also submitted that the Tribunal has erred in deducting $1/4^{th}$ of the amount towards personal expenses in arriving at the loss of pecuniary benefits, instead it ought to have deducted $1/5^{th}$ of the amount towards personal expenses of the deceased. In all, the learned counsel submitted that the amounts awarded by the Tribunal towards various heads are meagre and hence the compensation awarded by the Tribunal requires enhancement.

5.Heard the learned counsel on either side and perused the materials and evidence available on record carefully and meticulously.

6.With regard to negligence, considering the evidence of P.W.1-Alagu, the husband of the deceased and P.W.2-Eye witness to the occurrence, corroborated with the contents of the Ex.P1-First Information Report, coupled with Exs.R8 to R11 marked on the side of the Insurance Company, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the TATA ACE Vehicle. Further, while accepting the contention of the Insurance Company that the driver of the TATA ACE vehicle was not having the valid driving licence at the time of accident and that the owner of the vehicle has violated the policy conditions by permitting more number of persons to be travelled in the vehicle than the permissible limit, the Tribunal has ordered the Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle. Having given a finding that the accident had occurred only due to the rash and negligent driving of the driver of the TATA ACE vehicle, the Tribunal has directed the appellant Insurance Company in CMA No.1905 of 2017 / R2 in CMA No.1371 of 2017, being the insured for the said vehicle, to pay the compensation and since there were violations of policy conditions, the Tribunal permitted the Insurance Company to recover the compensation from the owner of the vehicle. The Tribunal has correctly considered the materials and evidence and fixed the negligence on the part of the driver of TATA ACE vehicle and has correctly ordered for pay and recovery.

7.In respect of the quantum of compensation, the Tribunal has awarded a sum of Rs.13,16,340/- towards loss of pecuniary benefits. The Tribunal has taken the monthly income of the deceased at Rs.6,500/- in the absence of any documents to substantiate the claim of the claimants that the deceased was working as coolie in building contract work. Thereafter, the Tribunal added a sum of Rs.3,250/- towards future prospects and arrived at the sum of Rs.9,750/-. Thereafter, 1/4th of the amount has been deducted towards personal expenses of the deceased since there were four dependents, 15 multiplier was adopted and a sum of Rs.13,16,340/- has been arrived at towards loss of pecuniary benefits (Rs.7,313/- x 12 x 15). The Tribunal has also awarded a sum of Rs.3,00,000/- towards loss of love and affection, Rs.50,000/- towards loss of estate, Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. The Tribunal has rightly fixed the monthly income of the deceased by considering the materials and evidence adduced on record, adopted the correct multiplier and awarded Rs.13,16,340/- towards loss of pecuniary benefits. The amounts awarded by the Tribunal towards other heads are also very reasonable. In view of the same, the compensation awarded by the Tribunal at Rs.17,92,000/- with interest at the rate of 7.5% per annum from the date of petition, is confirmed.

8.In the result, both the Civil Miscellaneous Appeals are dismissed, confirming the impugned judgment and decree passed by the Tribunal. No costs. Consequently, the connected miscellaneous petition is closed.

9.It is submitted that the Insurance Company (Appellant in CMA No.1905 of 2017 / R2 in CMA No.1371 of 2017), has already deposited the entire compensation awarded by the Tribunal. The minor respondents 2 and 3 in CMA No.1905 of 2017 would have attained majority by now. Hence, the major claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. The share of the third respondent minor in CMA No.1905 of 2017, shall continue to be in the bank deposit as ordered by the Tribunal, till he attains majority. The interest accrued in the bank deposit shall be withdrawn by the father of the minor, ie., the first respondent in CMA No.1905 of 2017, once in six months directly from the bank, which shall be used for the benefit and welfare of the minor.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal,
   II Court of Small Causes, Chennai.

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

+1cc to Mr.M.Swaminathan , Advocate SR.No. 80375
+2ccs to Mr.G.Udaya Sankar, Advocate SR.No. 79930

C.M.A.Nos.1905 of 2017
and C.M.P.No.10217 of 2017
and
C.M.A.No.1371 of 2017

A.SK(21/07/2020)