IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1018 of 2015
and
M.P.No.1 of 2015

M/s.Oriental Insurance Co. Ltd.
Office at No.173, J.N.Road
SBI ADB upstairs
Thiruvallur - 3. .. Appellant/3rd Respondent

Vs.

1.G.Muniamma

2.Minor.G.Ranjitha

3.Minor.G.Sangeetha

4.Minor.G.Poojitha

5.Minor.G.Vijay
(Minors 2 to 5 rep. by 1st respondent/
mother and natural guardian)
.. Respondents 1 to 6/ Petitioners

6.G.Desamma

7.P.Jailabdeen

8.S.Hari Jetty .. Respondents7 & 8/ Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2014 made in M.C.O.P.No.487 of 2008 on the file of Motor Accidents Claims Tribunal, IV Additional District Judge, Ponneri at Tiruvallur District.

For Appellant : Mr.J.Chandran
For R1 to R6 : No appearance
For R7 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 16.10.2014 made in M.C.O.P.No.487 of 2008 on the file of Motor Accidents Claims Tribunal, IV Additional District Judge, Ponneri at Tiruvallur District.

2.The appellant is 3rd respondent/Insurance Company in M.C.O.P.No.487 of 2008 on the file of Motor Accidents Claims Tribunal, IV Additional District, Ponneri at Tiruvallur District. The respondents 1 to 6 filed the said claim petition claiming a sum of Rs.11,00,000/- as compensation for the death of one Arjun Reddy, who died in the accident that took place on 06.03.2008.

3.According to the respondents 1 to 6, on the date of accident i.e., on 06.03.2008, while the deceased was travelling as loadman along with fruits in a Mahindra champion auto from Ramagiri to Narayanavanam, the driver of the said vehicle drove the same in a rash and negligent manner, lost his control, suddenly turned the vehicle on the left side, resulting which, the vehicle got capsized and the accident occurred. In the accident, the deceased sustained grievous injuries and died on the way to hospital. Therefore, the respondents 1 to 6 filed the above claim petition claiming compensation against the respondents 7 and 8 and the appellant.

4.The respondents 7 and 8, owners of the vehicle, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the offending vehicle is not insured with the appellant/Insurance Company. The driver of the offending vehicle did not possess valid driving license. The deceased travelled in the goods vehicle as an unauthorised gratuitous passenger and the seating capacity of the said vehicle is only one for driver. Therefore, the respondents 7 and 8 have violated the policy conditions and the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 6.

6.Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Arumugareddy, eye-witness, was examined as P.W.2 and marked six documents as Exs.P1 to P6. On the side of the appellant/Insurance Company, one Murali, Assistant Manager of the Insurance Company was examined as R.W.1 and marked three documents as Exs.R1 to R3.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the goods vehicle belonging to the respondents 7 & 8 and directed the appellant/Insurance Company being insurer of the said goods vehicle to pay a sum of Rs.8,94,000/- as compensation to the respondents 1 to 6 at the first instance and recover the same from the respondents 7 & 8.

8.Against the said award dated 16.10.2014 made in M.C.O.P.No.487 of 2008, granting compensation to the respondents 1 to 6, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to see that as per the Registration Certificate, the 7^{th} respondent is owner of the vehicle and the insurance policy is issued in the name of 8^{th} respondent and there is no privity of contract with the appellant. The offending vehicle is a goods carrier and its seating capacity is only one. The deceased travelled in the goods vehicle as an unauthorised passenger. The Tribunal having held that the seating capacity of the offending vehicle is only one and the deceased would not have travelled as loadman, ought to have exonerated the appellant/Insurance Company from its liability. The Tribunal erred in ordering pay and recovery. The notional income fixed by the Tribunal is without any basis. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.Though the respondents 1 to 6 entered appearance through their counsel, there is no representation on behalf of them either in person or through their counsel at the time of arguments.

11.Though notice was served on the 7^{th} respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel. The 8^{th} respondent remained exparte before the Tribunal and hence, notice to the 8^{th} respondent is dispensed with.

12.Heard the learned counsel appearing for the appellant/Insurance Company and perused the entire materials available on record.

13.It is the contention of the respondents 1 to 6 that the deceased travelled in the goods vehicle as a loadman. They have let in oral evidence to substantiate their claim. The appellant/Insurance Company has not let in any evidence to disprove the contention of the respondents 1 to 6 that the deceased travelled as loadman. The loadman was permitted to travel in the goods vehicle for loading and unloading the goods.

A loadman travelling in the goods vehicle cannot be termed as unauthorised passenger. The Tribunal erroneously held that the deceased cannot travel as loadman as seating capacity of the offending vehicle is only one. In the goods vehicle other than the driver, loadman for loading and unloading the goods or owner of the goods or any representative of the owner can travel along with the goods. The contention of the appellant/Insurance Company that there is no privity of contract because as per the Registration Certificate, 7th respondent is shown as owner of the offending vehicle and the insurance policy was issued in the name of the 8th respondent, is without merits. Insurance policy is issued for the vehicle and not for the owner of the vehicle. The appellant having issued insurance policy for the vehicle is bound by the terms of the policy. From the award of the Tribunal, it is seen that the driver of the offending vehicle did not possess driving license. The Tribunal considering the above materials, ordered pay and recovery directing the appellant to pay compensation to the respondents 1 to 6 at the first instance and recover the same from the respondents 7 and 8, who are owners of the offending vehicle. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, the respondents 1 to 6 have claimed that the deceased was loadman and was earning a sum of Rs.400/- per day. They have failed to prove the income of the deceased. In the absence of any material evidence with regard to income of the deceased, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2008 and the notional income fixed by the Tribunal is not excessive. The deceased was aged 45 years at the time of accident as per Ex.P3/post-mortem certificate. The Tribunal has not granted any enhancement towards future prospects. The respondents 1 to 6 are entitled to 25% enhancement towards future prospects. If 25% enhancement is added towards future prospects, the respondents 1 to 6 will get a sum of Rs.9,45,000/- as compensation towards loss of dependency, which is more than the compensation awarded by the Tribunal. Further, the Tribunal has not awarded any compensation towards loss of estate. In such circumstances, the compensation awarded by the Tribunal is not interfered with and the same is hereby confirmed.

15.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.8,94,000/- awarded by the Tribunal as compensation to the respondents 1 to 6/claimants, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the respondents 7 and 8, owners of the vehicle. On such deposit, the respondents 1 and 6 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The shares of the minors/respondents 2 to 5 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st respondent being mother of the minors/respondents 2 to 5 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

kj

To

1.The IV Additional District Judge
Motor Accidents Claims Tribunal
Tiruvallur at Ponneri.

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

+1cc to Mr.J.Chandran , Advocate SR.No. 9139
+1cc to Mr.S.Gopi, Advocate SR.No. 9261

C.M.A.No.1018 of 2015

A.SK(05.01.2021)