IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1807 of 2009

National Insurance Co., Ltd.,
Branch Office,
Udagamandalam ...Appellant/3rd respondent

Vs

1.Sambasivam

2.Yasodha

3. Prakasam

4. N. Krishnan .... Respondents/ Petitioners1&2/ Respondents1&2

PRAYER: Civil Miscellaneous Appeal filed to set aside the award passed in M.C.O.P.No.108 of 1996, on the file of the Motor Accident Claims Tribunal, Sub Court, Dharmapuri at Krishnagiri dated 10.03.2006.

For appellant : Mr.S. Arun Kumar
For respondents-1,2 and 4 : No appearance
For Respondent-3 : Mr.C. Prabakaran

J U D G M E N T

This appeal has been filed by the appellant/Insurance Company to set aside the award passed in M.C.O.P.No.108 of 1996, on the file of the Motor Accident Claims Tribunal, Sub Court, Dharmapuri at Krishnagiri.

2.The first and second respondents are the parents and legal heirs of the deceased. The 3rd and 4th respondents are the owner and driver of the offending vehicle.

3.Brief facts necessary for disposal of the case is as follows:

4.

On 13.04.1995 at about 7.00 a.m, when the deceased Ashok Kumar was travelling as a cleaner in a lorry bearing Registration No: T-M-S-7383 from Thennpanai river over bridge to Morappur Main Road, due to the negligent driving of the driver of the lorry, the lorry was capsized, resulting in the death of the cleaner Ashok Kumar. Hence, the parents of the deceased, who are the legal heirs of the deceased filed a claim petition seeking compensation for a sum of Rs.2,00,000/- for the death of their loveable son.

3.The Tribunal after analysing the materials available on record held that the accident occurred was due to the negligence on the part of the driver of the lorry and awarded a sum of Rs.1,86,200/-p.a with interest at the rate of 7.5% p.a as compensation and held that the Appellant/Insurer of the offending vehicle, Driver of the vehicle/ 3rd respondent and Owner of the vehicle/4th respondent were jointly and severally liable to pay the compensation.

5.The learned counsel appearing for the appellant-Insurance Company submits that the deceased travelled in the vehicle as an unauthorized passenger. He also contended that negligence on the part of the driver would completely absolve the liability of the Insurance Company and in the present case, as regards the claims by the legal representatives of the deceased, the Tribunal ought to have held that the Insurance Company was not liable for the compensation.

6.The learned counsel for the Insurance Company would further contend that the claim was not permissible under the policy as the terms of the policy specifically prohibits unauthorised persons to travel in the vehicle. According to the provisions of the Act as well as the policy, unless there was a special coverage and additional premium is paid by the owner of the vehicle to cover the liability in respect of any persons travelled in the vehicle and in the absence of any special contract with the owner of the vehicle, the Insurance Company was not liable to pay any compensation.

7.All the aforementioned contentions are denied and countered by learned counsel appearing for the respective claimants. He further contend that the order of the Tribunal was fully Justified.

8.In the impugned award passed by the Tribunal it is seen, that in the offending vehicle 17 persons were travelled in the vehicle, which is violation of the policy. The third respondent has not established the case that the deceased travelled in the vehicle as a cleaner. The owner and driver of the vehicle, who are the eyewitness to the occurrence failed to appear before the Tribunal. Ex.P.1/F.I.R also supports the case of the claimant. Hence, the Tribunal concluded that the negligent driving of the vehicle is the cause for the accident. This Court is of the view that the finding of the Tribunal is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

9.This Court while re-appreciating the evidence of F.I.R found that 20 passengers including the driver were travelled in the vehicle and due to the accident one person by name Ashok kumar died and all others were taken to hospital. Hence, it is clear that all the other persons who were travelled in the vehicle was also unauthorized passengers.

10.With regard to the quantum arrived by the Tribunal, the deceased was 22 years at the time of the accident and earning Rs.1,200/- per month. Hence, the annual income of the deceased was arrived at Rs.14,400/-(Rs.1,200x12). After deducting 1/3 rd towards his personal expenses Rs.9,600/- (Rs.14,400-Rs.4800) will be the contribution to his family members. Considering the age of the deceased the proper multiplier to be adopted is '17' and quantified Rs.1,63,200/-(Rs.9,600 x 17) as loss of income. Apart from this the Tribunal has awarded Rs.10,000/-each towards love and affection and funeral expenses and the Tribunal has awarded Rs.3,000/- towards Transportation expenses. Thus, in total Rs.1,86,200/- was awarded as total compensation.

11. The Hon'ble Supreme Court held in the case of Oriental Insurance Co.Ltd. v. Brij Mohan & Ors., reported in 2007 (2) TN MAC 66 (SC) : 2007 (7) SCC 56, that the intention of the Parliament was that the words "any person" occurring in Section 147 will not cover all persons, who are travelling in a goods carriage in any capacity whatsoever. By taking note of the various Judgments of the Hon'ble Supreme Court and this Court and finally held that the direction given by the Tribunal to the Insurance Company to pay the compensation, is not correct. The Court also observed that even though in many cases, the claimants may not be able to realise the award amount from the owner of the vehicle involved in the accident, the said factual position alone cannot impel the Court to do something against the provisions of the Statute and the decisions of the Larger Benches of the Hon'ble Supreme Court.

12. In the case on hand, it is very clear even from the finding given by the Tribunal that there was violation of policy conditions and the deceased is an unauthorised passenger. But the Tribunal has not exonerated the Insurance Company from the liability, which is not correct, Hence, this Court holds that the appellant-Insurance Company is not liable to pay any compensation to the claimants.

13.In the light of the above observations, this Court is of the considered view that the Tribunal ought to have exonerated the Insurance Company from paying compensation, which erroneously was not granted.

15. In the result, the appeal is allowed in respect of the question of liability of the Insurance Company to pay the

compensation. The quantum of compensation in this appeal is affirmed and there will be awards only against the owner of the vehicle and the awards against the Insurance Company stand set aside. No costs. Consequently, connected miscellaneous petition is closed.

16. If any amounts had already been deposited by the Insurance Company, the Insurance Company is at liberty to withdraw the same by making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

smn
To
The Motor Accidents Claims Tribunal,
Sub Court, Dharmapuri at Krishnagiri

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to Mr.S.Arun Kumar , Advocate SR.No. 7814

C.M.A.No.1807 of 2009
and
M.P.No.1 of 2009

A.SK(10/09/2020)