

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2020

CORAM:

THE HONOURABLE Mrs Justice V.BHAVANI SUBBAROYAN

C.M.A.No.2648 of 2011

National Insurance Company Ltd.,
Branch Office,
C-32, Second Floor,
Vijaya Plaza Building,
Anna Nagar, Chennai-600 040. ...Appellant/2nd Respondent

Vs.

1.Kalavathi
2.Minor Madan Kumar
3.Minor Vasantha Kumar
(Minors 2 & 3 rep. by their mother
and natural Guardian Kalavathi/R1)
...Respondents 1 to 3/Petitioner
4.Easwaran Reddy ...4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Principal District Court), Tiruvallur in M.C.O.P.No.237 of 2007 dated 31.03.2009.

For Appellant : Mrs.Rathnathara

For Respondent : Mr.K.Varadha Kamaraj
Nos.1 to 3

JUDGMENT

Challenging the award passed by the learned Principal District Judge, Tiruvallur in MCOP.No.237 of 2007 dated 31.03.2009, the present appeal has been preferred by the appellant/Insurance Company.

2.The brief facts of the case is as follows:

a)While the deceased Balusamy, was working as a load man in the Tipper lorry bearing registration No.TN-41-A-3465, before getting down from it, the driver lifted the body of the lorry, due to which gravels fell on the deceased and he succumbed to

the injuries at Ramachandra Hospital. The said accident occurred due to the rash and negligent act of the driver of the Tipper lorry.

b)The Tribunal after analysing the oral and documentary evidence held that the accident had occurred only due to the rash and negligent act of the driver of the Tipper lorry which was insured with the appellant herein and hence, directed the Insurance Company to pay the compensation to the claimants.

3.Heard Mrs.Rathnathara, learned counsel for the appellant and Mr.K.Varadha Kamaraj, learned counsel appearing on behalf of the respondents 1 to 3.

4.The learned counsel for the appellant/Insurance Company submitted that Tribunal had erroneously fixed the income of the deceased at Rs.4,500/- without any basis. She further contended that the multiplier adopted by the Court below is also high as the age of the deceased was determined as 37 years as per postmortem report. In support of her contentions, she relied on various decisions of the Hon'ble Apex Court reported in 2005 ACJ 1441 (SC), 2006 ACJ 2114 (SC), 2007 (1) TNMAC 1 (SC), 2007 ACJ 1076 (SC), 2007 ACJ 545, wherein the Hon'ble Supreme Court has repeatedly and consistently held against the mechanical application of multiplier in Motor Accident cases. She further contended that the accident had occurred only during the course of employment and the compensation ought to have been claimed under Workmen Compensation Act and not under MV Act.

5.It is the submission of the learned counsel that the claimants had filed petition before the Commissioner of Labour under Workmen Compensation Act and also filed petition before the Tribunal, which is not maintainable. She further contended that the pecuniary loss arrived at by the Tribunal is high and excessive and therefore, the same warrants interference.

6.Per contra, the learned counsel for the claimants/respondents submitted that the petition filed before the Commissioner of Labour under Workmen Compensation Act was withdrawn before the award passed by the Tribunal. He submitted that the compensation awarded by the Tribunal is just and reasonable and hence, the appeal filed by the Insurance Company is liable to be dismissed.

7.As regards negligence aspect, the Tribunal considering the evidence on record, has held that there was negligent on the part of the driver of the offending vehicle and the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle. The finding recorded by the

Tribunal with regard to the actionable negligence has not been assailed or impeached by the Insurance company. Hence, the said findings of the Tribunal with regard to negligence aspect, fixing the same on the part of the driver of the offending vehicle is liable to be confirmed and accordingly it is confirmed.

8.Considering the submissions made by the learned counsel on either side, this Court is of the opinion that the Tribunal had rightly arrived at the pecuniary loss to the family of the deceased. It is also stated that the petition filed before the Commissioner of Labour was withdrawn before passing of the award and therefore, the claimants are entitled to receive the compensation. Hence, I do not find any illegality or infirmity in the order passed by the learned Principal District Judge (MACT), Tiruvallur in MCOP.No.237 of 2007 dated 31.03.2009.

9.In view of the reasons stated, I find no reasons to interfere with the award passed by the Tribunal and the same is liable to be confirmed. Hence, the Civil Miscellaneous Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

DP

To

1.The Motor Accident Claims Tribunal,
(Principal District Court) Tiruvallur.

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

+1cc to Mrs.Rathnathara, Advocate SR.No.10906

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.11062

C.M.A.No.2648 of 2011

VG II (CO)
GMY (27/08/2020)